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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 188

PUGET SOUND POWER & LIGHT COMPANY AND THE CITY
OF SEATTLE, PLAINTIFFS IN ERROR,

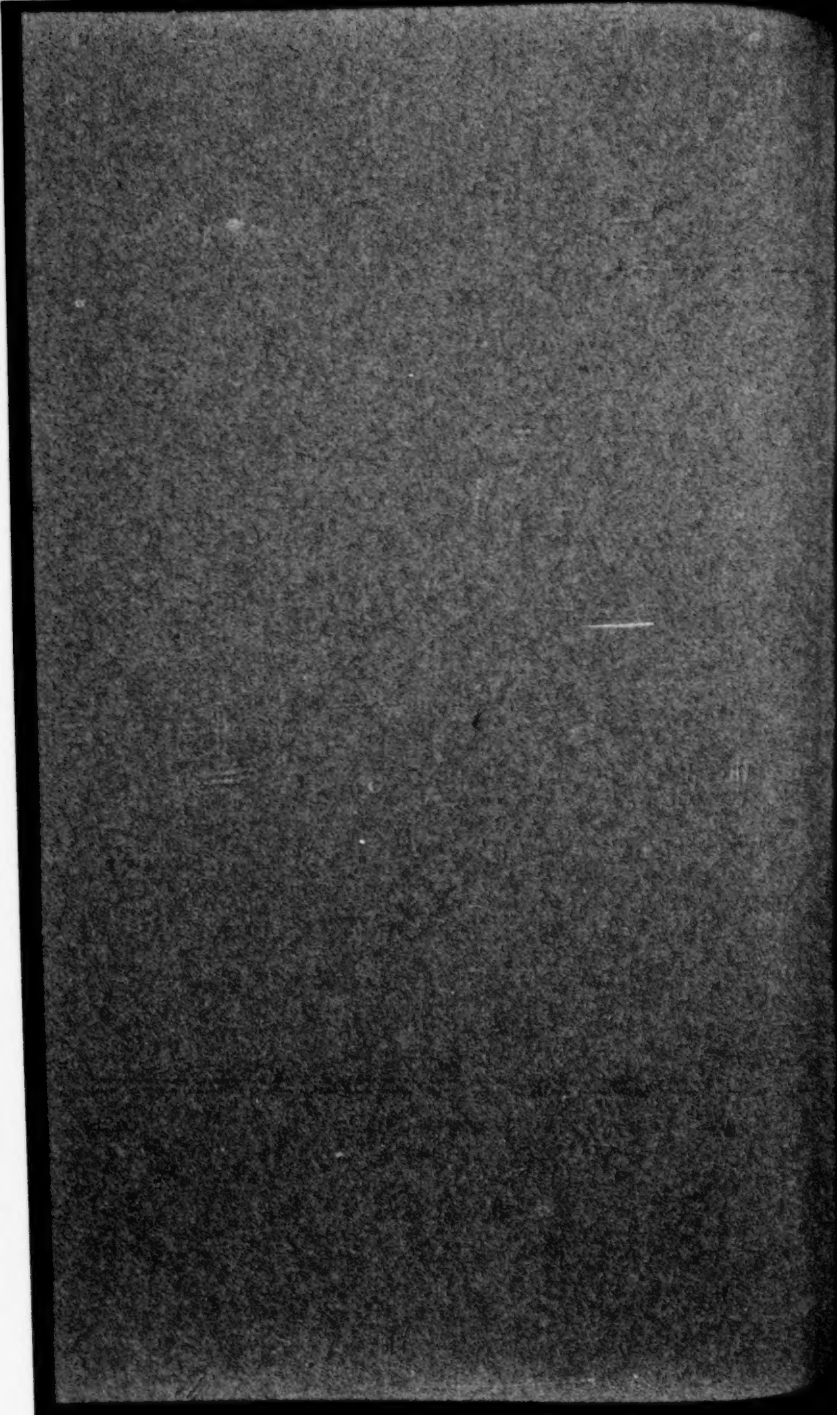
vs.

THE COUNTY OF KING, FRANK W. LOLL, AS ASSESSOR OF
KING COUNTY; NORMAN M. WARDALL, AS AUDITOR OF
KING COUNTY, ET AL.

ON WRIT OF HABEAS CORPUS TO THE SUPREME COURT OF THE STATE OF
WASHINGTON.

PRESENTED BY THE

ATTORNEY



(29,203)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 653.

PUGET SOUND POWER & LIGHT COMPANY AND THE CITY
OF SEATTLE, PLAINTIFFS IN ERROR,

vs.

THE COUNTY OF KING, FRANK W. HULL, AS ASSESSOR OF
KING COUNTY; NORMAN M. WARDALL, AS AUDITOR OF
KING COUNTY, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF
WASHINGTON.

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1870
The first of the year
was a very dry one
and the crops were
very poor. The
winter was also very
dry and the crops
were very poor.
The spring was very
dry and the crops
were very poor.
The summer was very
dry and the crops
were very poor.
The autumn was very
dry and the crops
were very poor.
The winter was very
dry and the crops
were very poor.

IN THE

**SUPERIOR COURT OF THE STATE OF WASHINGTON FOR
KING COUNTY.**

No. 139,815.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY, Plaintiff,

vs.

THE CITY OF SEATTLE, THE COUNTY OF KING, Frank W. Hull, as Assessor of King County; Norman M. Wardall, as Auditor of King County, and William A. Gaines, as Treasurer of King County, Defendants.

Complaint.

[Filed Dec. 2, 1919.]

Plaintiff, complaining of the defendants and each of them, alleges:

I. At all times hereinafter mentioned the plaintiff was and now is a corporation created and existing under the laws of the State of Massachusetts, authorized to do and doing business in the State of Washington. The plaintiff has paid to the State of Washington its last annual license fee.

II. At all times hereinafter mentioned The City of Seattle was and now is a municipal corporation created and existing under the laws of the State of Washington.

III. At all times hereinafter mentioned The County of King was and now is a municipal corporation created and existing under the laws of the State of Washington, and the defendant, Frank W. Hull, was at all such times and is now the duly qualified and acting Assessor of King County. The defendant, Norman M. Wardall, was at all such times and is now the duly qualified and acting Auditor of King County, and the defendant, William A. Gaines, at all such times was and is now the duly qualified and acting Treasurer of King County, state of Washington.

IV. On the 31st day of December, 1918, the City Council of The City of Seattle passed Ordinance No. 39,025, entitled "An Ordinance relating to and specifying and adopting a plan or system of additions and betterment to, and extensions of, the existing municipal street railway system owned and operated by The City of Seattle, providing for the acquisition of and payment for certain street railway lines and street railway property and equipment, and issuing bonds in payment therefor, and providing for the creation of, and creating, a special fund to pay the principal and interest of such bonds." Such ordinance was approved by the Mayor of The City of Seattle on the 31st day of December, 1918, filed in the office of the City Comptroller and ex-officio City Clerk on the

same day, and was duly published. It took effect thirty days after its approval, and ever since said date has been in full force and effect.

V. On the 31st day of December, 1918, the City Council of The City of Seattle also duly passed Ordinance No. 39,069, entitled, "An Ordinance relating to the municipal street railway system of the City of Seattle, providing for the acquisition of certain street railway lines, property and equipment as an addition and betterment thereto and extensions thereof; and specifying the terms, and authorizing the making, of certain contracts in connection therewith." Such ordinance was duly approved by the Mayor of The City of Seattle on the 8th day of January, 1919, filed on the same day in the office of the City Comptroller, and ex-officio City Clerk, and was duly published. It took effect on the 9th day of February, 1919, and ever since said date has been in full force and effect.

VI. Pursuant to the provisions of Ordinance No. 39,025 and Ordinance No. 39,069 there was filed in the office of the City Comptroller of The City of Seattle on the 30th day of December, 1918, an inventory bearing the City Comptroller's file number 72,055, containing a description of the property to be conveyed by the plaintiff to The City of Seattle, and on the 10th day of February, 1919, the plaintiff and The City of Seattle, pursuant to such ordinances, executed a contract for the conveyance of such property by the plaintiff to the city, and the delivery to the plaintiff of the bonds mentioned in such ordinances. A duplicate of such inventory was

marked Exhibit "A" and attached to and made a part of such contract, and such contract and exhibit were on or about the 10th day of February, 1919, filed for record and recorded in the office of the Auditor of King County State of Washington, at page 1 in volume 1,053 of Deeds.

VII. On the 31st day of December, 1918, Frank A. Twitchell, a citizen and taxpayer of The City of Seattle, instituted suit in the Superior Court of the State of Washington for King County against The City of Seattle and this plaintiff, to enjoin the consummation of the sale of the property mentioned in said ordinances to the city and the issue by the city of the bonds therein provided for, and on the 14th day of January, 1919, the Superior Court of the State of Washington for King County entered a decree in favor of this plaintiff and The City of Seattle, and dismissed the complaint of said Frank A. Twitchell and the intervening complaint of one Charles E. Horton who had intervened in such suit. Thereafter an appeal to the Supreme Court of the State of Washington from said decree was taken by the said Frank A. Twitchell and the said Charles E. Horton, and on the 5th day of March, 1919, the Supreme Court of the state rendered an opinion confirming the decree of the Superior Court, and thereafter the remittitur from the Supreme Court was filed in the Superior Court in accordance with such opinion.

VIII. At all times herein mentioned, and on the 15th day of March, 1919, Clark R. Jackson was the duly qualified and acting State Tax Commissioner of the State of Washington. On the 15th

day of March, 1919, the said Clark R. Jackson, without having any jurisdiction so to do, made a purported assessment of the street railway operating property of the plaintiff for the year 1919, and addressed and mailed to the defendant Frank W. Hull, as Assessor of King County, a letter, of which the following is a copy:

"Mr. Frank W. Hull,
County Assessor,
Seattle, Wash.

Dear sir:

This office has this day made a valuation upon the street railway operating property of the Puget Sound Traction, Light & Power Company, for the year 1919.

4 This assessment covers only the street railway operating property and you will proceed to value and assess all property of the Puget Sound Traction, Light & Power Company heretofore valued and assessed by this office with the exception of that property described in a certain inventory filed in the office of the City Comptroller on the 30th day of December, 1918, and bearing Comptroller's file No. 72,055. Very truly yours, Clark R. Jackson, State Tax Commissioner." CRJ—S.

IX. The purported assessment so made by Clark R. Jackson, as State Tax Commissioner, did not separately assess the real and personal property described in the inventory filed in the office of the City Comptroller on the 30th day of December, 1918, and bearing Comptroller's file number 72,055, but combined all of the real and personal property in a mass and valued the same in a lump sum, and the pretended assessment so made was not of the real property therein mentioned as real property and of the personal property therein mentioned as personal property, but the whole thereof was dealt with as though the same were personal property, when in truth and in fact a very large portion of the property therein described was real estate, described by metes and bounds in the ordinances hereinbefore mentioned, and in the contract hereinbefore mentioned, and the alleged assessment of all of such real and personal property was in a lump sum, so that the value of the real estate and the value of the personal property therein described is so commingled that it is impossible to segregate the alleged assessment of the realty from the alleged assessment of the personalty, and it will be impossible to pay any tax upon the realty without paying a tax upon the personalty or to pay a tax upon the personalty without paying a tax upon the realty.

5 X. At no time in the month of March, 1919, did the State Tax Commissioner have any data on which to value the property conveyed by the plaintiff to the defendant, The City of Seattle, pursuant to the provisions of the ordinance and contract hereinbefore referred to, nor had the State Tax Commissioner at any time during said month of March data necessary for assessing such property if the same were subject to assessment, nor had such

State Tax Commission received the report of the plaintiff company, which report he was by law required to take into consideration in making any valuation or assessment of the property of the plaintiff which he claims to have assessed on the 15th day of March, 1919, for the year 1919.

XI. On the 31st day of March, 1919, the plaintiff pursuant to the provisions of the ordinances of The City of Seattle hereinbefore mentioned, and the contract between the plaintiff and The City of Seattle executed pursuant to such ordinances, did execute and deliver to The City of Seattle a deed and bill of sale conveying all of the real and personal property described in the inventory hereinbefore mentioned, filed in the office of the City Comptroller of The City of Seattle and bearing Comptroller's file number 72055, with certain slight correctons by such conveyance made in such inventory, and such conveyance was on the 31st day of March, 1919, duly recorded in volume 1 of Deeds at page 1059, and in volume 60 of Miscellaneous Records, at page 229, in the office of the Auditor of King County, and The City of Seattle on the same day entered into possession of the property therein described and has ever since such entry been engaged in operating the property as a part of the municipal street railway system of The City of Seattle, and such property and the whole thereof is not subject to taxation under the constitution and laws of the State of Washington, but on the contrary is by such constitution and laws specifically exempted from taxation.

XII. The City of Seattle and the plaintiff, in the month of April, 1919, duly protested before the State Tax Commissioner against the purported assessment of the property conveyed by the plaintiff to the defendant The City of Seattle as hereinbefore mentioned and objected to the same or any part thereof being assessed, but the Tax Commissioner ruled that he had jurisdiction to assess such property and had exercised such jurisdiction on the 15th day of March, 1919, and overruled the protest of the plaintiff and The City of Seattle, and thereafter the State Board of Equalization, against the protest of the plaintiff and The City of Seattle that such property was exempt from taxation, certified the same to the defendant Frank W. Hull as Assessor of King County.

XIII. The defendant Frank W. Hull, as County Assessor, unless restrained from so doing will distribute the value so certified to him and will apportion as an easement a part of such value to the several taxing districts in King County, and such purported assessments will be placed upon the tax rolls of King County and the taxes extended against the same.

XIV. Thereafter the County Commissioners of King County levied a tax for the year 1919 upon all real and personal property upon the assessment roll, and to be placed upon the assessment roll, amounting to approximately seventy-two mills on the dollar, according to the value thereof as placed and to be placed upon such assessment roll, and the purported assessed value of the property

conveyed by the plaintiff to The City of Seattle is the sum of approximately six million dollars.

XV. The defendant Norman M. Wardall, as Auditor of King County, will, unless enjoined from so doing, certify such assessment roll, attach his warrant thereto authorizing the collection of said taxes, and deliver the same to the defendant William A. Gaines, Treasurer of King County, and the said William A. Gaines will, unless enjoined from so doing, proceed to collect the taxes upon said property, and if the taxes thereon are not paid prior to the 5th day of March, 1920, the said County Treasurer will distrain and sell such property or the property of the plaintiff to satisfy the taxes claimed by such County Assessor, or will charge the amount of such taxes to the real estate of the plaintiff, and the same will thereby become a cloud upon the title of very valuable property of the plaintiff in the City of Seattle, consisting of the office building of the plaintiff at the corner of Seventh Avenue and Olive Street in the City of Seattle, and various pieces of real estate, and also upon the distributing light and power system of the plaintiff in the City of Seattle.

XVI. No part of the tax levied upon such alleged assessment is now due or payable, nor could the same or any part thereof now be paid, either by the plaintiff or The City of Seattle, if the property claimed to be assessed were subject to assessment, and no part of such tax will be payable prior to the 1st day of February, 1920, notwithstanding which fact the alleged tax constitutes a cloud upon the property and a threatened cloud upon all of the real property of the plaintiff in the City of Seattle.

XVII. The plaintiff and The City of Seattle have no adequate remedy at law to protect the property sold by the plaintiff to The City of Seattle from seizure to satisfy the alleged tax, nor to prevent the alleged tax becoming a cloud upon the title to the real estate of the plaintiff and that of The City of Seattle in case such alleged tax should be charged to such real estate in lieu of being enforced against the property sold by the plaintiff to The City of Seattle, and if the alleged tax should be collected it will be distributed by the defendant William A. Gaines to The City of Seattle, The County of King and The State of Washington, and the plaintiff and The City of Seattle will thereby be compelled to institute a multiplicity of suits to recover the amount so distributed so far as The County of King and The City of Seattle are concerned, and will be without any remedy for the portion of the tax which will be paid to The State of Washington.

XVIII. Under the contract executed by the plaintiff and The City of Seattle for the conveyance of the property hereinbefore mentioned, and in the conveyance executed by the plaintiff to The City of Seattle of such property, it is provided that if at the time of the delivery of such conveyance any lien should have attached to the property or any part thereof for the year 1919, for any tax for the year 1919, and if such tax should become collectible, the same should be paid before it should become delinquent by The City of

Seattle and the plaintiff in amounts proportional to the respective periods of time that the said parties should, respectively, be in possession of the property during the year 1919.

8 XIX. At the time the State Tax Commissioner claims to have assessed the property conveyed by the plaintiff to The City of Seattle on the 31st day of March, 1919, pursuant to the contract made on February 10, 1919, and pursuant to the ordinances of The City of Seattle hereinbefore mentioned neither the property nor any part thereof had been listed for assessment, and there was no lien created by the alleged assessment at said date, nor prior nor subsequent thereto, for any tax for the year 1919, and such property and the whole thereof is and at all of such times was public property of The City of Seattle.

XX. No tax whatsoever is justly due upon any of the property conveyed by the plaintiff to The City of Seattle by the conveyances and pursuant to the contract and ordinances hereinbefore mentioned, and the plaintiff heretofore paid all taxes upon such property for previous years.

Wherefore, plaintiff prays judgment as follows:

1. That the alleged assessment by the State Tax Commissioner and the certification thereof by the State Board of Equalization, the entry thereof upon the assessment roll, and all subsequent proceedings by the County Assessor, the County Auditor and the County Treasurer, be adjudged null and void, and that the County Assessor, County Auditor and County Treasurer be perpetually restrained and enjoined from taking any steps whatsoever in respect to the alleged assessment and the levy of taxes thereon, except to cancel all steps taken by them, and that no other or further steps be taken by said defendants or any of them for the collection or enforcement of any and all taxes levied upon such pretended assessment.

2. That the said defendants be required to enter upon the assessment roll the cancellation of such assessment, and also the cancellation of the alleged tax.

3. That pending the hearing and determination of this suit a temporary injunction be granted restraining the defendants, 9 the County Assessor, County Auditor and County Treasurer, from taking any further steps in connection with such purported assessment and the collection of any tax thereon, until the final hearing and determination of this suit.

4. That if any alleged tax upon the property or any part thereof, or on account of the property or any part thereof, be held valid, then prior to delinquency in the payment thereof The City of Seattle be decreed to pay its proportion thereof, in accordance with the terms of the conveyance hereinbefore mentioned.

5. That the final decree in this suit adjudge that all of the property conveyed by the plaintiff to The City of Seattle by the conveyance and pursuant to the contract and ordinances hereinbefore mentioned, be not subject to assessment or taxation, but wholly exempt therefrom.

6. That the plaintiff have such other and further relief as shall be just and equitable, and recover of the defendants its costs and disbursements in this action sustained. James B. Howe, Hugh A. Tait, E. L. Crider, N. W. Brockett, Attorneys for Plaintiff.

STATE OF WASHINGTON,
County of King, ss:

Alton W. Leonard, being first duly sworn, on oath deposes and says, that he is the President of Puget Sound Traction, Light & Power Company, the plaintiff above named; that he has heard read the foregoing complaint, knows the contents thereof, and believes the same to be true; that he makes this verification for and on behalf of the plaintiff herein, because said plaintiff is a corporation and he is President thereof. Alton W. Leonard.

Subscribed and sworn to before me this 2nd day of December, 1919, Edgar L. Crider, Notary Public in and for the State of Washington, Residing at Seattle.

[File endorsement omitted.]

10 In the Superior Court of the State of Washington for King County.

No. 139,815.

[Title omitted.]

Summons.

[Filed Dec. 2, 1919.]

The State of Washington to the said City of Seattle, The County of King, Frank W. Hull, as Assessor of King County; Norman M. Wardall, as Auditor of King County, and William A. Gaines, as Treasurer of King County, Defendants:

Your and each of you are hereby summoned to appear within twenty (20) days after the service of this summons upon your, exclusive of the day service, and defend the above entitled action in the Superior Court of the State of Washington for King County aforesaid; and answer the complaint of the plaintiff, and serve a copy of your answer upon the undersigned attorneys for plaintiff, at their office below stated; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint, which will be filed with the clerk of said court (a copy of which is herewith served upon your). James B. Howe, Hugh A. Tait, E. L. Crider, N. W. Brockett, Attorneys for Plaintiff. Address: 860 Stuart Building, Seattle, King County, Washington.

[File endorsement omitted.]

11 In the Superior Court of the State of Washington in and for
King County.

No. 139,815.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY, Plaintiff,
v.

THE CITY OF SEATTLE, THE COUNTY OF KING *County*, NORMAN M.
Wardall, as Auditor of King County, and William A. Gaines, as
Treasurer of King County, Defendants.

THE CITY OF SEATTLE, a Municipal Corporation, Cross-complainant,
v.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY, THE COUNTY
of King, Frank W. Hull, as Assessor of King County; Norman M.
Wardall, as Auditor of King County, and William A. Gaines, as
Treasurer of King County, Cross-defendants.

Answer and Cross-complaint.

[Filed Jan. 29, 1920.]

Comes now the defendant, The City of Seattle, and answering the
complaint of the plaintiff herein, admits, denies and alleges as
follows:

I. Answering Paragraph I of said complaint, this defendant ad-
mits the allegations therein contained.

II. Answering Paragraph II of said complaint, this defendant
admits the allegations therein contained.

III. Answering Paragraph III of said complaint, this defendant
admits the allegations therein contained.

IV. Answering Paragraph IV of said complaint, this defendant
admits the allegations therein contained.

V. Answering Paragraph V of said complaint, this defendant
admits the allegations therein contained.

12 VI. Answering Paragraph VI of said complaint, this de-
fendant admits the allegations therein contained.

VII. Answering Paragraph VII of said complaint, this defendant
admits the allegations therein contained.

VIII. Answering Paragraph VIII of said complaint, this defend-
ant admits the allegations therein contained.

IX. Answering Paragraph IX of said complaint, this defendant
admits the allegations therein contained.

X. Answering Paragraph X of said complaint, this defendant ad-
mits the allegations therein contained.

XI. Answering Paragraph XI of said complaint, this defendant
admits the allegations therein contained, but alleges that the deed
referred to therein is recorded in Volume 1059 of deeds, at page 1,
instead of in Volume 1 of Deeds, at page 1059, as therein set forth,

XII. Answering Paragraph XII of said complaint, this defendant admits the allegations therein contained.

XIII. Answering Paragraph XIII of said complaint, this defendant admits the allegations therein contained.

XIV. Answering Paragraph XIV of said complaint, this defendant admits the allegations therein contained, except that it denies that the amount assessed against said property is any sum in excess of Five Million Six Hundred Forty Thousand (\$5,640,000) Dollars.

XV. Answering Paragraph XV of said complaint, this defendant admits the allegations therein contained.

XVI. Answering Paragraph XVI of said complaint, this defendant admits the allegations therein contained.

XVII. Answering Paragraph XVII of said complaint, this defendant admits the allegations therein contained.

XVIII. Answering Paragraph XVIII of said complaint, the defendant admits that the contract referred to therein contained a provision, as therein set forth, said provision being in words as follows:

13 "That state, county and municipal taxes levied against the property for the year 1919 shall be paid, before the same shall become delinquent, by the respective parties hereto, in amounts proportional to the respective periods of time that said parties are respectively in possession of said property during the year 1919."

that under the terms of said clause in said contract, should the tax herein be adjudged valid, the plaintiff is required to pay one-fourth of said sum and this defendant the remaining three-fourths.

XIX. Answering Paragraph XIX of said complaint, this defendant admits the allegations therein contained.

XX. Answering Paragraph XX of said complaint, this defendant admits the allegations therein contained.

Cross-complaint.

By way of cross-complaint against the cross-defendants, complainant The City of Seattle, alleges:

I. That during all the times hereinafter mentioned, the cross-complainant, The City of Seattle, was, and now is, a municipal corporation created and existing under the laws of the State of Washington.

II. That during all the times hereinafter mentioned, the cross-defendant Puget Sound Traction, Light & Power Company, was, and now is, a corporation created and existing under the laws of the State of Massachusetts, authorized to do, and doing, business in the State of Washington.

III. That during all the times hereinafter mentioned, the cross-defendant The County of King, was, and now is, a municipal corporation created and existing under the law of the State of Washington, and the cross-defendant Frank W. Hull, was at all such times, and now is, the duly qualified and acting Assessor of King County:

14 that the cross-defendant, Norman M. Wardall, was at all such times, and now is, the duly qualified and acting Auditor of King County, and the cross-defendant, William A. Gaines, at all such times was, and is now, the duly qualified and acting Treasurer of King County.

IV. That on the 31st day of December, 1918, the City Council of The City of Seattle passes Ordinance No. 39025, entitled, "An Ordinance relating to and specifying and adopting a plan or system of additions and betterments to, and extensions of, the existing municipal street railway system owned and operated by The City of Seattle, providing for the acquisition of and payment for certain street railway lines and street railway property and equipment, and issuing bonds in payment therefor, and providing for the creation of, and creating, a special fund to pay the principal and interest of such bonds." Such ordinance was approved by the Mayor of The City of Seattle on the 31st day of December, 1918, filed in the office of the City Comptroller and ex-officio City Clerk on the same day, and was duly published. It took effect thirty days after its approval, and ever since said date has been in full force and effect.

V. That on the 31st day of December, 1918, the City Council of The City of Seattle also duly passed Ordinance No. 39069, entitled, "An Ordinance relating to the municipal street railway system of the City of Seattle, providing for the acquisition of certain street railway lines, property and equipment as an addition and betterment thereto and extension thereof; and specifying the terms, and authorizing the making, of certain contracts in connection therewith." Such ordinance was duly approved by the Mayor of The City of Seattle on the 8th day of January 1919, filed on the same day in the office of the City Comptroller and ex-officio City Clerk, and was duly published. It took effect on the 7th day of February, 1919, and ever since said date has been in full force and effect.

VI. That pursuant to the provisions of Ordinance No. 39025 and Ordinance No. 39069, there was filed in the office of the City Comptroller of the City of Seattle, on the 30th day of December, 1918, an inventory bearing the City Comptroller's file number 15 72055, containing a description of the property to be conveyed by the cross-defendant, Puget Sound Traction, Light & Power Company, to The City of Seattle, and on the 10th day of February, 1919, the Puget Sound Traction, Light & Power Company and The City of Seattle, pursuant to such ordinances, executed a contract for the conveyance of such property by the cross-defendant, Puget Sound Traction, Light & Power Company, to the cross-complainant, and the delivery to said cross-defendant of the bonds mentioned in such ordinances. A duplicate of such inventory was marked "Exhibit A" and attached to and made a part of such contract, and such contract and exhibit were, on or about the 13th day of February, 1919 filed for record and recorded in the office of the Auditor of King County, State of Washington, at page 1, in Volume 1053 of Deeds.

VII. That on or about the 31st day of December, 1918, Frank A. Twitchell, a citizen and taxpayer of The City of Seattle, instituted suit in the Superior Court of the State of Washington for King County, in Cause No. 132,728 of the records of said court, against the cross-complainant and the cross-defendant Puget Sound Traction, Light & Power Company, in which action the said Frank A. Twitchell sought to enjoin the consummation of the sale of the property mentioned in the ordinances hereinabove referred to and the issuance and delivery *if* said bonds. Said cause was heard and determined on the 14th day of January, 1919, the Superior Court entering a decree in favor of the defendants in said action and against the plaintiff therein. Charles E. Horton was an interveing plaintiff in said suit. The court entered an order dismissing said action. An appeal was taken to the Supreme Court from said decree by the said plaintiff and intervening plaintiff and on the 5th day of March 1919, the Supreme Court rendered an opinion affirming the decree of the Superior Court, and on March 28th, 1919, a remittitur from the Supreme Court directing judgment accordingly was filed with the Clerk of the Superior Court of King County.

VIII. That at all times herein mentioned, and on the 15th day of March, 1919, Clark R. Jackson, was the duly qualified and acting State Tax Commissioner of the State of Washington. On 16 the 15th day of March, 1919, the said Clark R. Jackson, without having any jurisdiction so to do, made a purported assessment of the street railway operating property of the cross-defendant, Puget Sound Traction, Light & Power Company, for the year 1919, and addressed and mailed to the cross-defendant Frank W. Hull, as Assessor of King County, a letter, of which the following is a copy:

"Mr. Frank W. Hull, County Assessor, Seattle, Wash.

DEAR SIR: This office has this day made a valuation upon the street railway operating property of the Puget Sound Traction, Light & Power Company, for the year 1919.

This assessment covers only the street railway operating property and you will proceed to value and assess all property of the Puget Sound Traction, Light & Power Company heretofore valued and assessed by this office with the exception of that property described in a certain inventory filed in the office of the City Comptroller on the 30th day of December, 1918, and bearing Comptroller's file No. 72055. Very truly yours, Clark R. Jackson, State Tax Commissioner." C. R. J./S.

IX. That the purported assessment so made by Clark R. Jackson, as State Tax Commissioner, did not separately assess the real and personal property described in the inventory filed in the office of the City Comptroller on the 30th day of December, 1918, and bearing Comptroller's file number 72055, but combined all of the real and personal property in a mass and valued the same in a lump sum, and the pretended assessment so made was not of the real property

therein mentioned as real property and of the personal property therein mentioned as personal property, but the whole thereof was dealt with as though the same were personal property, when in truth and in fact a very large portion of the property therein described was real estate, described by metes and bounds in the ordinances hereinbefore mentioned, and in the contract hereinbefore mentioned, and the alleged assessment of all of such real and personal property was in a lump sum, so that the value of the real estate and the value of the personal property therein described is so commingled that it is impossible to segregate the alleged assessment of the realty from the alleged assessment of the personalty, and it will be impossible to pay any tax upon the realty without paying a tax upon the personalty, or to pay a tax upon the personalty without paying a tax upon the realty.

17 X. That at no time in the month of March, 1919, did the State Tax Commissioner have any data on which to value the property conveyed by the cross-defendant, Puget Sound Traction, Light & Power Company, to the cross-complainant, pursuant to the provisions of the ordinance and contract hereinbefore referred to, nor had the State Tax Commissioner at any time during said month of March data necessary for assessing such property if the same were subject to assessment, nor had such State Tax Commissioner received the report of the cross-defendant, Puget Sound Traction, Light & Power Company, which report he was by law required to take into consideration in making any valuation or assessment of the property of said cross-defendant which he claims to have assessed on the 15th day of March, 1919, for the year 1919.

XI. That on the 31st day of March, 1919, the cross-defendant Puget Sound Traction, Light & Power Company, pursuant to the provisions of the ordinances of The City of Seattle hereinbefore mentioned, and the contract between the said cross-defendant and the cross-complainant, executed pursuant to such ordinances, did execute and deliver to the City of Seattle a deed and bill of sale conveying all of the real and personal property described in the inventory hereinbefore mentioned, filed in the office of the City Comptroller of The City of Seattle and bearing Comptroller's file number 72055, with certain slight corrections by such conveyance made in such inventory, and such conveyance was on the 31st day of March, 1919,

18 duly recorded in Volume 1059 of Deeds, at page 1, and in Volume 60 of Miscellaneous Records, at page 229, in the office of the Auditor of King County, and The City of Seattle on the same day entered into possession of the property therein described and has ever since such entry been engaged in operating the property as a part of the municipal street railway system of the City of Seattle, and such property, and the whole thereof, is not subject to taxation under the Constitution and laws of the State of Washington, but, on the contrary, is by such Constitution and laws specifically exempted from taxation.

XII. That the cross-complainant and the cross-defendant, Puget Sound Traction, Light & Power Company, in the month of April,

1919, duly protested before the State Tax Commissioner against the purported assessment of the property conveyed by the said cross-defendant to the cross-complainant, as hereinbefore mentioned, and objected to the same, or any part thereof, being assessed, but the Tax Commissioner ruled that he had jurisdiction to assess such property and had exercised such jurisdiction on the 15th day of March, 1919, and overruled the protest of the cross-complainant and the said cross-defendant, Puget Sound Traction, Light & Power Company, and thereafter the State Board of Equalization, against the protest of the cross-complainant and said cross-defendant that such property was exempt from taxation, certified the same to the cross-defendant Frank W. Hull, as Assessor of King County.

XIII. That the cross-defendant Frank W. Hull, as Assessor of King County, unless restrained from so doing, will distribute the value so certified to him and will apportion as an assessment a part of such value to the several taxing districts in King County, and such purported assessments will be placed upon the tax rolls of King County and the taxes extended against the same.

XIV. That thereafter the County Commissioners of King County levied a tax for the year 1919 upon all real and personal property upon the assessment roll, and to be placed upon the assessment roll, amounting to approximately seventy-two mills on the dollar, according to the value thereof as placed, and to be placed, upon such assessment roll, and the purported assessed value of the property conveyed by the cross-defendant Puget Sound Traction, Light & Power Company to the cross-complainant is the sum of Five Million Six Hundred Forty Thousand Dollars (\$5,640,000).

XV. That the cross-defendant Norman M. Wardall, as Auditor of King County, will, unless enjoined from so doing, certify such assessment roll, attach his warrant thereto authorizing the collection of said taxes, and deliver the same to the cross-defendant W. A. Gaines, as Treasurer of King County, and the said cross-defendant W. A. Gaines will, unless enjoined from so doing, proceed to collect the tax upon the property of cross-complainant and unless said taxes are paid prior to the 15th day of March 1920, the County Treasurer will distrain, or attempt to distrain, and sell such property to satisfy said tax. That the tax, being void, will cast a cloud upon the property of the cross-complainant.

XVI. That no part of the tax levied upon such alleged assessment is now due or payable, nor could the same, or any part thereof, now be paid either by the cross-complainant or the cross-defendant Puget Sound Traction Light & Power Company, if the property claimed to be assessed were subject to assessment, and no part of such tax will be payable prior to the 1st day of February 1920, notwithstanding which fact the alleged tax constitutes a cloud upon the property and a threatened cloud upon all of the real property of the cross-complainant and the cross-defendant Puget Sound Traction, Light & Power Company.

XVII. That the cross-complainant and the cross-defendant Puget Sound Traction, Light & Power Company have no adequate remedy at law to protect the property sold by the said cross-defendant to the

cross-complainant from seizure to satisfy the alleged tax, nor to prevent the alleged tax becoming a cloud upon the title to the real estate of the cross-complainant and that the cross-defendant Puget Sound Traction, Light & Power Company, in case such alleged tax should be charged to such real estate in lieu of being enforced against

20 the property sold by the cross-defendant Puget Sound Traction, Light & Power Company to the cross-complainant, and if the alleged tax should be collected it will be distributed by the cross-defendant William A. Gaines to The City of Seattle, The County of King and the State of Washington, and the cross-complainant and the cross-defendant Puget Sound Traction, Light & Power Company will thereby be compelled to institute a multiplicity of suits to recover the amount so distributed so far as The County of King and The City of Seattle are concerned, and will be without any remedy for the portion of the tax which will be paid to the State of Washington.

XVIII. That under the contract executed between the cross-complainant and the cross-defendant Puget Sound Traction, Light & Power Company hereinabove mentioned, and in the conveyance executed by the said cross-defendant, it is provided that if at the time of the delivery of such conveyance any lien should have attached to the property, or any part thereof, for the year 1919, for any tax for said year, and if such tax should become collectible, the same should be paid, before it became delinquent, by the cross-complainant and the cross-defendant Puget Sound Traction, Light & Power Company in amounts proportional to the respective periods of time that said parties should respectively be in possession of the property during the year 1919, said clause being in words as follows:

"That state, county and municipal taxes levied against the property for the year 1919 shall be paid, before the same shall become delinquent, by the respective parties hereto, in amounts proportional to the respective periods of time that said parties are respectively in possession of said property during the year 1919."

that the cross-complainant took possession of said property at 11 P. M., on March 31, 1919, and that under said clause in said contract, should the tax herein be adjudged valid and a collectible lien against the property the cross-defendant Puget Sound Traction, Light and Power Company will pay one-fourth of the amount of such tax and the cross-complainant the remaining three-fourths.

21 XIX. That at the time the State Tax Commissioner claims to have assessed the property conveyed by the cross-defendant Puget Sound Traction, Light & Power Company to the cross-complainant on the 31st day of March 1919, pursuant to the contract made on February 10, 1919, and pursuant to the ordinances of The City of Seattle hereinbefore mentioned, neither the property, nor any part thereof, had been listed for assessment, and there was no lien created by the alleged assessment at said date, nor prior nor subsequent thereto, for any tax for the year 1919, and such property, and the whole thereof is, and at all of such times was, public property of The City of Seattle.

XX. That no tax whatsoever is justly due upon any of the property conveyed by the cross-defendant Puget Sound Traction, Light & Power Company to the cross-complainant by the conveyances and pursuant to the contract and ordinances hereinbefore mentioned, and said cross-defendant Puget Sound Traction, Light & Power Company heretofore paid all taxes upon such property for previous years.

Wherefore, cross-complainant prays judgment as follows:

1. That the alleged assessment by the State Tax Commissioner and the certification thereof by the State Board of Equalization, the entry thereof upon the assessment roll, and all subsequent proceedings by the County Assessor, the County Auditor and the County Treasurer, be adjudged null and void, and that the County Assessor, County Auditor and County Treasurer be perpetually restrained and enjoined from taking any steps whatsoever in respect to the alleged assessment and the levy of taxes thereon, except to cancel all steps taken by them, and that no other or further steps be taken by said cross-defendants, or any of them, for the collection or enforcement of any and all taxes levied upon such pretended assessment.
2. That the said cross-defendant be required to enter upon the assessment roll the cancellation of such assessment, and also the cancellation of the alleged tax.
3. That, pending the hearing and determination of this suit, a temporary injunction be granted restraining the cross-defendants, the County Assessor, County Auditor and County Treasurer, 22 from taking any further steps in connection with such purported assessment and the collection of any tax thereon, until the final hearing and determination of this suit.
4. That if any alleged tax upon the property, or any part thereof, or on account of the property, or any part thereof, be held valid, then, prior to delinquency in the payment thereof, that the proportion to be paid by the cross-defendant Puget Sound Traction, Light & Power Company and by the cross-complainant be decreed, and that said proportion be fixed as follows: That the Puget Sound Traction, Light & Power Company be charged with one-fourth thereof, and The City of Seattle be charged with three-fourths of the amount of such tax.
5. That the final decree in this suit adjudge that all of the property conveyed by the Puget Sound Traction, Light & Power Company to cross-complainant by the conveyance and pursuant to the contract and ordinances hereinbefore mentioned, be not subject to assessment or taxation, but wholly exempt therefrom.
6. That the cross-complainant have such other and further relief as shall be just and equitable, and recover of the cross-defendants its costs and disbursements in this action sustained. Walter F. Meier, Corporation Counsel; Robert H. Evans, Assistant; J. T. L. Kennedy, Assistant, Attorneys for Cross-complainant.

STATE OF WASHINGTON,
County of King, ss:

G. B. Fitzgerald, being first duly sworn, on oath says: That he is Mayor of the City of Seattle, one — the defendants and the cross-complainant named in the foregoing Answer and Cross-complaint; that he has heard the same read, knows the contents thereof, and believes the same to be true. C. B. Fitzgerald.

23 Subscribed and sworn to before me this 27 day of January, 1920. R. B. McClinton, Notary Public in and for the State of Washington, Residing at Seattle, Washington.

[File endorsement omitted.]

24 In the Superior Court of the State of Washington for
King County.

No. 139,815.

[Title omitted.]

Answer.

[Filed Feb. 24, 1920.]

Come now the defendants The County of King, Frank W. Hull as Assessor of King County, Norman M. Wardall as Auditor of King County, and William A. Gaines as Treasurer of King County, and for answer to the complaint of the plaintiff admit, deny and allege as follows:

I. Answering Paragraph I of said complaint, these defendants and each of them admit the same.

II. Answering Paragraph II of said complaint, these defendants, and each of them, admit the same.

III. Answering Paragraph III of said complaint, these defendants, and each of them, admit the same.

IV. Answering Paragraph IV of said complaint, these defendants, and each of them, admit the same.

V. Answering Paragraph V of said complaint, these defendants, and each of them, admit the same.

VI. Answering Paragraph VI of said complaint, these defendants, and each of them, admit the same.

VII. Answering Paragraph VII of said complaint, these defendants, and each of them, admit the same.

VIII. Answering Paragraph VIII of said complaint, these defendants, and each of them, admit the same, except that they deny that said Clark R. Jackson, as State Tax Commissioner, acted without any jurisdiction *tion* so to do in making the assessment therein mentioned.

25

IX. Answering Paragraph IX of said complaint, these defendants, and each of them, deny the same and each and every allegation therein had and contained, and on information and belief allege the fact to be that said Clark R. Jackson, as State Tax Commissioner, segregated from the inventory referred to in said Paragraph IX of said complaint all that certain real property therein mentioned which did not, in fact, constitute a part of the street-railway operating property of plaintiff, and thereupon placed a valuation upon the remainder of the property in said inventory specified and mentioned, such remainder constituting the street-railway operating property of plaintiff, in part real property and in part personal property, and assessed the same for purposes of taxation upon such valuation as street-railway operating property of plaintiff as provided by law.

These defendants, and each of them, further allege upon information and belief that no other real property mentioned in said inventory, except as hereinabove specified, was by said Clark R. Jackson, as Tax Commissioner, valued and assessed for purposes of taxation at any time during the year 1919.

X. Answering Paragraph X of said complaint, these defendants, and each of them, deny that portion thereof alleging that at no time in the month of March, 1919, did the State Tax Commissioner have any data on which to value the property conveyed by the plaintiff to the defendant The City of Seattle, pursuant to the provisions of the ordinance and contract in said complaint referred to, and also deny that the State Tax Commissioner at no time during said month of March had data necessary for assessing such property if the same were subject to assessment.

As to that portion of said Paragraph X wherein it is alleged that the State Tax Commissioner had not during the month of March, 1919, received the report of plaintiff company, these defendants, and each of them, admit that said Tax Commissioner had not received from the plaintiff the report therein referred to, but deny that such

26 Tax Commissioner was required by law to take such report into consideration in making any valuation or assessment of said street-railway operating property of plaintiff, unless in his judgment he was at the time of making such assessment without sufficient information from other sources authorized by law to enable him to ascertain the true cash value of said property.

XI. Answering Paragraph XI of said complaint, these defendants, and each of them, admit the same, except that portion thereof wherein it is alleged that

"such property and the whole thereof is not subject to taxation under the constitution and laws of the State of Washington, but on the contrary is by such constitution and laws specifically exempted from taxation,"

which said portion these defendants, and each of them, deny.

And these defendants, and each of them, assert that the deed referred to in said Paragraph XI is recorded in Volume 1059 of Deeds at page 1, instead of in Volume *i* of Deeds at page 1059.

XII. Answering Paragraph XII of said complaint, these defendants, and each of them, affirm that they have not knowledge or information sufficient to form a belief as to the matters and things therein contained and therefore deny the same, except that these defendants, and each of them, admit that the State Board of Equalization, against the protest of the plaintiff and The City of Seattle that such property was exempt from taxation, submitted such valuation to Frank W. Hull, as Assessor of King County, as provided by law.

XIII. Answering Paragraph XIII of said complaint, these defendants and each of them, deny the same and each and every allegation therein had and contained, and allege the facts to be that prior to the commencement of this action defendant Frank W. Hull, as County Assessor, had already duly distributed the valuations of all taxable property in King County to the several taxing districts therein, including said value so certified to him by the State Board of Equalization, and certified such distribution of values to the proper officials of the several tax-levying districts affected thereby, to wit:

City Comptroller and ex-officio City Clerk, City of Seattle.

School Board, School District No. 1, Seattle, King County, and

27 Board of County Commissioners, King County.

These defendants, and each of them, further allege that on or before October 10, 1919, the several tax-levying bodies affected by such valuations had each separately levied taxes and certified to said defendant Frank W. Hull, as such County Assessor, the total amount of tax-money to be raised in their several taxing districts on the 1919 assessed valuations, based upon the following tax-levies, to wit:

State of Washington.....	9.288 mills.
County of King.....	16.512 "
City of Seattle.....	30.42 to 32.20 mills.
School District No. 1, Seattle.....	13.5 mills.

(said certification of the City of Seattle comprising twelve separate taxing-districts of said City, due to changes from time to time in its corporate limits).

Said defendants, and each of them, further allege that, based upon said 1919 valuations, including the valuation aforesaid upon the street-railway operating property of plaintiff, and based upon the aforesaid certifications of such several taxing bodies, the following total amounts of taxes are, to be raised and to be collected by defendant William A. Gaines, as County Treasurer, and to be paid to and credited to the accounts of the treasurers of such several taxing districts, to wit:

State of Washington.....	\$2,734,549.15
County of King.....	4,861,420.68
City of Seattle.....	7,714,683.20
School District No. 1, Seattle.....	3,290,501.91

Total\$18,601,154.94

Said defendants, and each of them, further allege that prior to the commencement of this action, there had been placed upon the tax-rolls of King County assessments for purposes of taxation upon the taxable property therein, including the street-railway operating property of plaintiff, and the taxes against all such property duly extended.

XIV. Answering Paragraph XIV of said complaint, these defendants, and each of them, admit that the Commissioners of King County levied a tax for the year 1919 upon all real and personal property upon the assessment-rolls of King County and to be placed upon the assessment-roll, but deny that the same amounted
28 to approximately 72 mills on the dollar, or any other sum than 16.512 mills on the dollar, or a money total of \$4,-831,420.68, and deny that the assessed valuation of the street-railway operating property of plaintiff is the sum of approximately \$6,-000,000, or any other sum than \$5,640,000, and further allege that the total tax for the year 1919 against such street-railway operating property of plaintiff is the sum of \$401,017.76.

XV. Answering Paragraph XV of said complaint, these defendants, and each of them, allege that it is the duty of defendant Norman M. Wardall, as Auditor of King County, to certify in each assessment book or list that the foregoing therein is a correct list of taxes levied on the real and personal property in his county, for the year involved, which duty has been duly performed; also to deliver to defendant William A. Gaines, as County Treasurer, the tax-rolls of his county with his warrant for the call thereof, which duty has been duly performed.

And these defendants, and each of them, further allege that the tax-rolls of King County are now in the hands of defendant William A. Gaines, as County Treasurer, for collection, and that he will proceed to collect such taxes and the whole thereof, and enforce the lien thereof as provided by law.

And except as herein alleged and admitted, these defendants, and each of them, deny each and every allegation in said Paragraph XV had and contained.

XVI. Answering Paragraph XVI of said complaint, these defendants, and each of them, allege that the tax therein referred to is now due and payable.

XVII. Answering Paragraph XVII of said complaint, these defendants, and each of them, deny that plaintiff and The City of Seattle have no adequate remedy at law to protect said street-railway operating property from seizure to satisfy said tax, or to prevent said tax becoming a cloud upon the title to the real estate of either in case such tax should be charged to such real estate in lieu of being enforced against said street-railway operating property.

29 These defendants, and each of them, admit that if said tax is collected it will be distributed by defendant William A. Gaines, as County Treasurer, as provided by law, but deny that plaintiff will thereby be compelled to institute a multiplicity of suits to recover such amount, or any portion thereof, and these defend-

ants, and each of them, admit and allege that the portion thereof payable to the State of Washington, namely, \$52,384.32, must by law, whether collected or not, be paid by defendant William A. Gaines, as County Treasurer, out of the treasury of King County into the treasury of the State of Washington, and that said tax, if collected, will by said County Treasurer be distributed to and by him paid into the treasuries of the said several taxing districts in the following principal amounts:

State of Washington.....	\$52,384.32
City of Seattle.....	179,365.76
School District No. 1, Seattle.....	76,140.00
County of King.....	93,127.68
Total	\$401,017.76

XVIII. Answering Paragraph XVIII of said complaint, these defendants, and each of them, admit that the contract referred to therein contained a provision, as therein set forth, said provision being in words and figures as follows:

"That state, county and municipal taxes levied against the property for the year 1919 shall be paid, before the same shall become delinquent, by the respective parties hereto, in amounts proportional to the respective periods of time that said parties are respectively in possession of said property during the year 1919."

XIX. Answering Paragraph XIX of said complaint, these defendants, and each of them, admit that on the 31st day of March, 1919, defendant The City of Seattle acquired title to such property, and deny each and every other allegation in said Paragraph had and contained; and defendants, and each of them, allege that the taxes for the year 1919 against the street railway operating property of plaintiff became a lien against the same and against all other personal property of plaintiff on said 15th day of March, 1919, and the same is now a valid and subsisting lien against the same, the lien of which cannot be defeated by the consumption, transformation, sale or removal of such property, or any part thereof, but is enforceable against any personalty of plaintiff, or, in the judgment of defendant William A. Gaines, as County Treasurer, may be enforced against the real property of plaintiff, as provided by law.

XX. Answering Paragraph XX of said complaint, these defendants, and each of them, deny the same and each and every allegation therein had and contained.

For a further answer and affirmative defense to said complaint these defendants, and each of them, allege as follows, to-wit:

I. These defendants, and each of them, further allege on information and belief, that from year to year preceding the year 1918 plaintiff had annually made return to the Tax Commissioner of the State of Washington of its property, both real and personal, within

mits of the City of Seattle, and had listed the same with said Commissioner as street-railway operating property, and said Commissioner had, pursuant thereto, valued and assessed the same as street-railway operating property; and defendants, and each of them, further allege that the real and personal property specified and mentioned in the above-mentioned inventory comprised the street-railway system of plaintiff in the City of Seattle, and certain real and personal property and equipment used and useful in connection therewith, all as more particularly appears in Section 1 of Ordinance No. 39069, specified and referred to in Paragraph VI of plaintiff's complaint and in the contract of sale in said Ordinance No. 39069 set forth and in the deed and bill of sale referred to in Paragraph XI of plaintiff's complaint.

Defendants, and each of them, further allege that, by reason of the facts and foregoing facts, plaintiff is estopped to assert that the property, both real and personal, specified in said inventory, contract, and bill of sale, did not comprise the street-railway system of plaintiff in the City of Seattle and certain real and personal property and equipment used and useful in connection therewith, and to assert that such street-railway property and the whole thereof, both real and personal, should not be assessed as personal property in the manner provided by law.

Wherefore these defendants, and each of them, pray that plaintiff take nothing by this action, that the above-entitled action be dismissed, and that these defendants, and each of them, do have recovered their costs and disbursements herein expended and by them to be taxable. Fred C. Brown, Howard A. Hanson, Attorneys for Defendants, The County of King, Frank W. Hull, as Assessor of King County; Norman M. Wardall, as Auditor of King County, William A. Gaines as Treasurer of King County.

STATE OF WASHINGTON,
County of King, ss:

Frank W. Hull being first duly sworn, on oath deposes and says: That he is Assessor of King County, and one of the defendants in the above-entitled action, that he has read the foregoing Answer, and the contents thereof, and believes the same to be true. Frank W. Hull.

Subscribed and sworn to before me this 23 day of February, 1920.
C. Claypool, Notary Public in and for the State of Washington,
Sitting at Seattle.

True service of the within Answer acknowledged and receipt of copy thereof admitted this 24 day of Feb., 1920.
Copy of within received Feb. 24, 1920. Walter F. Meier, Cor-
poration Counsel.

Due service of the within Answer acknowledged and receipt thereof admitted this 24 day of Feb., 1920. James B. Howe, Attorneys for Plaintiff.

[File endorsement omitted.]

32 In the Superior Court of the State of Washington for King County.

No. 139,815.

[Title omitted.]

Reply to Answer of County of King et al.

[Filed Feb. 26, 1920.]

Comes now the plaintiff above named, and for reply to the answer of the County of King, Frank W. Hull as Assessor of King County, Norman M. Wardall as Auditor of King County, and William A. Gaines as Treasurer of King County, in the above entitled action, denies each and every allegation of new matter in said answer contained.

Wherefore, having fully replied plaintiff prays for judgment as in its complaint it has prayed. James B. Howe, Hugh A. Tait, Edgar L. Crider, Norwood W. Brockett, Attorneys for Plaintiff.

[File endorsement omitted.]

33 STATE OF WASHINGTON,
County of King, ss:

Alton W. Leonard, being first duly sworn, on oath deposes and says, that he is the President of Puget Sound Traction, Light & Power Company, the plaintiff above named; that he has heard read the foregoing reply, knows the contents thereof, and believes the same to be true; that he makes this verification for and on behalf of the plaintiff herein because said plaintiff is a corporation and he is President thereof. Alton W. Leonard.

Subscribed and sworn to before me this 26th day of February, 1920. Edgar L. Crider, Notary Public in and for the State of Washington, Residing at Seattle,

Copy of within Reply received and service acknowledged this 26th day of Feb. 1920. ———, Attorneys for Defendants, County of King et al.

Copy of within received Feb. 26, 1920. Fred C. Brown, Prosecuting Attorney.

In the Superior Court of the State of Washington for King
County.

No. 139,815.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY, Plaintiff,
vs.

THE CITY OF SEATTLE, THE COUNTY OF KING, FRANK W. HULL, as
Assessor of King County; Norman M. Wardall, as Auditor of
King County, and William A. Gaines, as Treasurer of King
County, Defendants.

THE CITY OF SEATTLE, A Municipal Corporation, Cross-complainant,
vs.

PUGET SOUND TRACTION, LIGHT & POWER COMPANY; THE COUNTY
of King, Frank W. Hull, as Assessor of King County; Norman
M. Wardall, as Auditor of King County, and William A. Gaines,
as Treasurer of King County, Cross-defendants.

Answer to Cross-complaint of the City of Seattle.

[Filed Feb. 27, 1920.]

Comes now the cross-defendants The County of King, Frank W.
Hull, as Assessor of King County, Norman M. Wardall, as Auditor of
King County, and William A. Gaines, as Treasurer of King County,
and for answer to the cross-complaint of The City of Seattle, admit,
deny and allege as follows:

I.

Answering Paragraph I of said cross-complaint, these cross de-
fendants, and each of them, admit the same.

II.

Answering Paragraph II of said cross-complaint, these cross-de-
fendants, and each of them, admit the same.

III.

Answering Paragraph III of said cross-complaint, these
cross-defendants, and each of them, admit the same.

IV.

Answering Paragraph IV of said cross-complaint, these cross-
defendants, and each of them, admit the same,

V.

Answering Paragraph V of said cross-complaint, these cross-defendants, and each of them, admit the same.

VI.

Answering Paragraph VI of said cross-complaint, these cross-defendants, and each of them, admit the same.

VII.

Answering Paragraph VII of said cross-complaint, these cross-defendants, and each of them, admit the same.

VIII.

Answering Paragraph VIII of said cross-complaint, these cross-defendants, and each of them, admit the same, except that they deny that said Clark R. Jackson, as State Tax Commissioner, acted without any jurisdiction so to do in making the assessment therein mentioned.

IX.

Answering Paragraph IX of said cross-complaint, these cross-defendants, and each of them, admit the same, except that they deny allegation therein had and contained, and on information and belief allege the fact to be that said Clark R. Jackson, as State Tax Commissioner, segregated from the inventory referred to in said Paragraph IX of said cross-complaint all that certain real property therein mentioned which did not, in fact constitute a part of the street railway operating property of plaintiff, and thereupon placed a valuation upon the remainder of the property in said inventory specified and mentioned, such remainder constituting the street railway operating property of plaintiff, in part real property and in part personal property, and assessed the same for purposes of taxation upon such valuation as street railway operating property of plaintiff, as provided by law.

36 These cross-defendants, and each of them, further allege upon information and belief that no other real property mentioned in said inventory, except as herein above specified, was by said Clark R. Jackson, as Tax Commissioner, valued and assessed for purposes of taxation at any time during the year 1919.

X. Answering Paragraph X of said cross-complaint, these cross-defendants, and each of them deny that portion thereof alleging that at no time in the month of March, 1919, did the State Tax Commissioner have any data on which to value the property conveyed by the plaintiff to The City of Seattle, pursuant to the provisions of the ordinance and contract in said cross-complaint referred to, and also deny that the State Tax Commissioner at no

time during the said month of March had data necessary for assessing such property if the same were subject to assessment.

As to that portion of said Paragraph X wherein it is alleged that the State Tax Commissioner had not during the month of March, 1919, received the report of plaintiff company, these cross-defendants, and each of them, admit that said Tax Commissioner had not received from plaintiff the report therein referred to, but deny that such Tax Commissioner was required by law to take such report into consideration in making any valuation or assessment of said street railway operating property of plaintiff, unless in his judgment he was at the time of making such assessment without sufficient information from other sources authorized by law to enable him to ascertain the true cash value of said property.

XI. Answering Paragraph XI of said cross-complaint, these cross-defendants, and each of them, admit the same, except that portion thereof wherein it is alleged that

"such property, and the whole thereof, is not subject to taxation under the Constitution and laws of the State of Washington, but, on the contrary, is by such Constitution and laws specifically exempted from taxation,"

which said portion these cross-defendants, and each of them, deny.

37 XII. Answering Paragraph XII of said cross-complaint, these cross-defendant-, and each of them, affirm that they have not knowledge or information sufficient to form a belief as to the matters and things therein contained, and therefore deny the same, except that these cross-defendants, and each of them, admit that the State Board of Equalization, against the protest of the plaintiff and The City of Seattle that such property was exempt from taxation, submitted such valuation to Frank W. Hull, as Assessor of King County, as provided by law.

XIII. Answering Paragraph XIII of said cross-complaint, these cross-defendants, and each of them, deny the same and each and every allegation therein had and contained, and allege the facts to be that prior to the commencement of this action cross-defendant Frank W. Hull, as County Assessor had already duly distributed the valuations of all taxable property in King County to the several taxing districts therein, including said value so certified to him by the State Board of Equalization, and certified such distribution of values to the proper officials of the several tax levying districts affected thereby, to-wit:

City Comptroller and Ex-officio City Clerk, City of Seattle,
School Board, School District No. 1, Seattle, King County, and
Board of County Commissioners, King County.

These cross-defendants, and each of them, further allege that on or before October 10, 1919, the several tax levying bodies affected by such valuations had each separately levied taxes and certified to

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said cross-defendant Frank W. Hull, as such County Assessor, the total amount of tax money to be raised in their several taxing districts on the 1919 assessed valuations, based upon the following tax levies, to-wit:

State of Washington.....	9.288	mills.
County of King.....	16.512	"
City of Seattle.....	30.42	to 32.20 mills.
School District No. 1, Seattle.....	13.5	mills.

38 (said certification of the City of Seattle comprising twelve separate taxing districts of said City, due to changes from time to time in its corporate limits).

Said cross-defendants, and each of them, further allege that, based upon said 1919 valuations, including the valuation aforesaid upon the street railway operating property of plaintiff, and based upon the aforesaid certifications of such several taxing bodies, the following total amounts of taxes are to be raised and to be collected by cross-defendant William A. Gaines, as County Treasurer, and to be paid to and credited to the accounts of the treasurers of such several taxing districts, to-wit:

State of Washington.....	\$2,734,549.15
County of King.....	4,861,420.68
City of Seattle.....	7,714,683.20
School District No. 1, Seattle.....	3,290,501.91
Total	\$18,601,154.94

Said cross-defendants, and each of them, further allege that prior to the commencement of this action, there had been placed upon the tax rolls of King County assessments for purposes of taxation upon the taxable property therein, including the street railway operating property of plaintiff, and the taxes against all such property duly extended.

XIV. Answering Paragraph XIV of said cross-complaint, these cross-defendants, and each of them, admit that the County Commissioners of King County levied a tax for the year 1919 upon all real and personal property upon the assessment roll, and to be placed upon the assessment roll, but deny that the same amounted to approximately 72 mills on the dollar, or any other sum than 16.512 mills on the dollar, or a money total of \$4,861,420.68, and further allege that the total tax for the year 1919 against such street railway operating property of plaintiff is the sum of \$401,017.76.

XV. Answering Paragraph XV of said cross-complaint, these cross-defendants, and each of them, allege that it is the duty of cross-defendant Norman M. Wardall, as Auditor of King
39 County, to certify in such assessment book or list that the foregoing therein is a correct list of taxes levied on the real and personal property in his county for the year involved, which duty has been duly performed; also to deliver to cross-defendant

William A. Gaines, as County Treasurer, the tax rolls of his county with his warrant for the call thereof, which duty has been duly performed.

And these cross-defendants, and each of them, further allege that the tax rolls of King County are now in the hands of cross-defendant William A. Gaines, as County Treasurer, for collection, and that he will proceed to collect such taxes and the whole thereof and enforce the lien thereof, as provided by law.

And except as herein alleged and admitted, these cross-defendants, and each of them, deny each and every allegation in said Paragraph XV had and contained.

XVI. Answering Paragraph XVI of said cross-complaint, these cross-defendants, and each of them, allege that the tax therein referred to is now due and payable.

XVII. Answering Paragraph XVII of said cross-complaint, these cross-defendants' and each of them, deny that plaintiff and The City of Seattle have no adequate remedy at law to protect said street railway operating property from seizure to satisfy said tax, or to prevent said tax becoming a cloud upon the title to the real estate of either in case such tax should be charged to such real estate in lieu of being enforced against said street railway operating property.

These cross-defendants, and each of them, admit that if said tax is collected it will be distributed by cross-defendant William A. Gaines, as County Treasurer, as provided by law, but deny that plaintiff and The City of Seattle will thereby be compelled to institute a multiplicity of suits to recover such amount, or any portion thereof, and these cross-defendants, and each of them, admit and allege that the portion thereof payable to the State of Washington, namely, \$52,384.32, must by law, whether collected or not, be paid by cross-defendant William A. Gaines, as County Treasurer, out of the treasury of King County into the treasury of the State of Washington, and that said tax, if collected, will by said County

40 Treasurer be distributed to and by him paid into the treasuries of the said several taxing districts in the following principal amounts:

State of Washington.....	\$52,384.32
City of Seattle.....	179,365.76
School District No. 1, Seattle.....	76,140.00
County of King.....	93,127.68
Total	<u>\$401,017.76</u>

XVIII. Answering Paragraph XVIII of said cross-complaint, these cross-defendants, and each of them, admit that the contract referred to therein contained a provision, as therein set forth, said provision being in words and figures as follows:

"That state, county and municipal taxes levied against the property for the year 1919 shall be paid, before the same shall become

delinquent, by the respective parties hereto, in amounts proportional to the respective periods of time that said parties are respectively in possession of said property during the year 1919."

XIX. Answering Paragraph XIX of said cross-complaint, these cross-defendants, and each of them, admit that on the 31st day of March, 1919, the cross-complainant, The City of Seattle, acquired title to such property, and deny each and every other allegation in said Paragraph had and contained; and these cross-defendants, and each of them, allege that the taxes for the year 1919 against the street railway operating property of plaintiff became a lien against the same and against all other personal property of plaintiff on said 15th day of March, 1919, and the same is now a valid and subsisting lien against the same, the lien of which cannot be defeated by the consumption, transformation, sale or removal of such property, or any part thereof, but is enforceable against any personalty of plaintiff, or, in the judgment of cross-defendant William A. Gaines, as County Treasurer, may be enforced against the real property of plaintiff, as provided by law.

41 XX. Answering Paragraph XX of said cross-complaint, these cross-defendants, and each of them, deny the same and each and every allegation therein had and contained.

Wherefore, these cross-defendants, and each of them, pray that the cross-complainant take nothing by its action, that its cross-complaint be dismissed, and that these cross-defendants, and each of them, do have and recover their costs and disbursements herein expended and by statute taxable. Fred C. Brown, Howard A. Hanson, Attorneys for Cross-Defendants, The County of King, Frank W. Hull, as Assessor of King County; Norman M. Wardall, as Auditor of King County; and William A. Gaines, as Treasurer of King County.

STATE OF WASHINGTON,
County of King, ss:

Frank W. Hull, being first duly sworn, on oath deposes and says:

That he is Assessor of King County, and one of the cross-defendants in the above entitled action, that he has read the foregoing answer, knows the contents thereof, and believes the same to be true. Frank W. Hull.

Subscribed and sworn to before me this 27 day of February, 1920. Chester A. Batchelor, Notary Public in and for the State of Washington, Residing at Seattle.

Due service of the within Answer acknowledged and receipt of copy thereof admitted this 27 day of Feb., 1920. James B. Howe, Attorney for Plaintiff P. S. T. L. & P. Co.

Due service of the within Answer acknowledged and receipt of copy thereof admitted this 27 day of Feb., 1920. Walter F. Meier, By E. M. F., Attorneys for Cross-Complainant.

[File endorsement omitted.]

42 In the Superior Court of the State of Washington in and for King County.

No. 139,815.

[Title omitted.]

Answer of Puget Sound Traction, Light & Power Company to Cross-complaint of City of Seattle.

[Filed Mar. 11, 1920.]

Comes now the cross-defendant, Puget Sound Traction, Light & Power Company, and answers the cross-complaint of The City of Seattle in the above entitled cause, as follows:

Referring to the allegations contained in Paragraphs I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, and XX this cross-defendant admits each and all of the allegations in said paragraphs contained.

Wherefore, having answered, this cross-defendant prays for judgment as in its complaint prayed. James B. Howe, Hugh A. Tait, Edgar L. Crider, Norwood W. Brockett, Attorneys for Answering Cross-Defendant.

43 STATE OF WASHINGTON,
County of King, ss:

Alton W. Leonard, being first duly sworn, on oath deposes and says, that he is President of Puget Sound Traction, Light & Power Company, the cross-defendant answering herein; that he has read the foregoing answer, knows the contents thereof, and believes the same to be true; that he makes this verification for and in behalf of said cross-defendant for the reason that it is a corporation, and he is President thereof. Alton W. Leonard.

Subscribed and sworn to before me this 11th day of March, 1920. Edgar L. Crider, Notary Public in and for the State of Washington, Residing at Seattle.

Copy of within received Mar. 11, 1920. Walter F. Meier, Corporation Counsel.

[File endorsement omitted.]

44 In the Superior Court of the State of Washington for King County.

No. 139,815.

[Title omitted.]

Memorandum Decision.

[Filed Oct. 20, 1920.]

The City of Seattle, an incorporated city of the first class, entered into a contract with the Puget Sound Traction, Light and Power Company, a corporation, organized under the laws of the State of Massachusetts, to effect the sale to the City of a street railway "system, property and equipment" of the last named company. This purchase was directed by Ordinance No. 39025, approved December 31, 1918, supplemented by Ordinance No. 39069, approved by the Mayor on January 8, 1919.

The actual transfer was effected by an instrument bearing date of March 31, 1919. Physical delivery of the property took place the same day.

This conveyance of March 31, 1919, contained, among numerous other provisions, one which reads as follows:

"It is also further agreed between the parties hereto that if at the time of the delivery of this deed any lien shall have attached to the property or any part thereof for the year 1919 for any tax for the year 1919 such lien shall not constitute a breach of warranty, and that if such tax shall become collectable the same shall be paid before the same shall become delinquent by the respective parties hereto in amounts proportional to the respective periods of time that the same parties are respectively in possession of said property during the year 1919."

45 On March 15, 1919, or shortly thereafter, and before the 31st day of March, 1919, Clark R. Jackson, the State Tax Commissioner, caused to be entered upon a book kept for that purpose in his public office, following the name of the Puget Sound Traction Light and Power Company, a notation as follows: "1919 Personal Property, \$12,000,000.00." The notation contains a further identification of the property as being "the street railway system property and equipment in the City of Seattle" * * * excepting from said inventory, however, certain non-operating real estate," etc. Subsequent to March 15, 1919, the State Board of Equalization, certified the assessment as made to the Assessor of King County.

The action is brought by the Traction Company to enjoin further action by the several public officers in the collection of this tax which amounts to the principal sum of \$401,017.76.

The several contentions made on behalf of the plaintiffs are:

First. That the State Tax Commissioner had no authority, in law, to make the assessment.

Second. That he had no authority to make it in the month of March, as attempted.

Third. That the assessment as attempted was void because the property was assessed as personal property.

Counsel for the County and its officers defend the assessment as made. Reference is made to the provisions of the Acts of 1893, page 326 1895, page 501, and 1897, page 140. The first act mentioned is described by its title,—“An Act to provide for the assessment and collection of taxes in the State of Washington, and declaring an emergency.” This act defines real and personal property; fixes the first day of April preceeding the assessment as valuation day, and provides for the place of assessment of the personal property of street “railroads,” plank roads, etc. It further provides that “every person of full age” shall list all his moneys, etc., and makes general provision as to the procedure of the levy and assessment of taxes.

The legislature of 1895 gave much attention to the matter
46 of the levy and collection of taxes, some four acts having been passed in that year, in two of which the title makes no reference at all to the fact that the particular act made provision for the collection of taxes.

In 1897, still another set (p. 136, laws of '97) is passed which deals generally with the subject of taxation under the title “An Act to provide for the assessment and collection of taxes in the State of Washington.” This act defines “personal” and “real property” and describes the manner of assessment to be followed by “railroad” companies. *The act provides that the property of railroad companies.* The act provides that the property of railroad companies (Sec. 28) “shall be listed and assessed with reference to the amount, kind and value, on the first day of March of the year in which it is listed.” Section 35 provides again that rolling stock of any railroad company shall be “listed and assessed as personal property * * * on the first day of March of each year.” But in Section 29 of the same act it is provided the companies shall “in the month of March of each year make out and file with the County Assessors * * * a statement or schedule,” etc. So far as the date is concerned the foregoing provisions are a mere reiteration of Section 6 of the same act which is set forth as Section 9101 in R. & B. code. This reads in part as follows:

“All real property in this state subject to taxation shall be listed and assessed * * * with reference to its value on the first day of March preceeding the assessment. All personal property in this state subject to taxation shall be listed and assessed every year with reference to its value on the first day of March preceeding the assessment.”

The foregoing and other general provisions of this act seem to contemplate the preparation, by the individual or corporation, of certain lists minutely described in the act and their consideration by the assessor and equalization board. But I do not think, under this Act, that it can be said that the assessor is precluded from such investigation as he may make preliminary to the receipt of any proper list. In fact Section 46 enjoins:

47 "The assessor shall begin the preliminary work for each assessment not later than the first day of February of each year in all counties." * * * "He shall also complete the duties of listing and placing valuations on all property by May 31st of each even number year."

In general form this Act stands undisturbed until the enactment of the Act of 1907. In 1907 (See Laws 1907, P. 132) the state legislature attempted the enactment of a special statute governing the assessment of taxes against transportation companies and described its purpose, in the title as "An Act to provide for the assessment of the operating property of railroads." The term "railroads" is defined in Section 6 of the Act as being inclusive of "street railways, suburban railroads or interurban railroads," etc.

Passing for the moment the contention of the Traction Company that the Act is unconstitutional as applied to Street Railways by reason of failure to include the carriers of that type in the title, an examination of the act discloses a wide departure from the former legislative plan.

The former distinction between real and personal property as defined by the earlier act of 1897 is, as to "railroads," wiped away, and the term "property of the railroad company" is employed to include both real and personal property excepting, however, real estate "not adjoining its tracts, stations or terminals, and real estate not used in operating the railroad. The latter is to be assessed "in the same manner as the like property of individuals."

A new definition classifying both as to "real" and "personal" property is then at Section 12, given to the "property of the railroad company."

The plan proposed in 1907 seems to be supplemental and not in derogation of the preceding act. As to railroad property, the burden is thrown upon the State Board of Tax Commissioners who are obligated to make the assessment. The plan in general provided for the Tax Commissioner's duties that are similar to those thrown upon the Tax Assessor of the County as to other property.

48 The Act requires (Section 5) every railroad company operating in the state "between the first day of January and the first day of April in each year," to file a report with the board covering certain details set forth in the Act. It gives to the Board certain inquisitorial power and estops the company from questioning the conclusion of the Board after refusal or neglect to make the required report.

The record in the case at bar is clear that in the year 1919 the complaining company did not at any time file with the State Tax Commissioner any statement in substantial compliance with the requirements of the statute. It is likewise undisputed in the record that at no time did the complaining company avail itself of the right of review of the acts of the State Tax Commissioner, provided under the statute.

Counsel in the case in their oral argument to the court covered the very wide range of authorities bearing upon the several points raised. It would effect no good purpose, even as a courtesy to counsel, to attempt to review and distinguish the many authorities cited. The Court will content itself with the observation that it has read with care all of the citations from our own Supreme Court and many from other Courts bearing upon the points at issue. The Court will therefore briefly state its own conclusions.

First. Under the law of this state the assessment of personal property begins as and with the filing of the assessment by the assessor or tax commissioner.

Second. The assessment of personal property, whether made at or subsequent to March 1st of each year, is, in my judgment, intended to become a lien as of that date.

Third. The legislature of the state has the power to re-classify property which is ordinarily considered real property and assign it to another subdivision under the general head of personal property.

Fourth. The Tax Commissioner of the state was acting *quire* within his power in listing the property for taxation on March 15, 1919, and this act, in my judgment, becomes effective as of March 1st of that year. I am of the opinion that this would be true even if the act of the assessor had been done after March 31, 1919.

49 Fifth. The failure of the complaining company to avail itself of the right of review of any irregularity or injustice done by reason of the assessment as made, should estopp the Company from any further review by the court at this time.

Sixth. The point made by the petitioner that the act itself is unconstitutional and void by reason of the failure of the legislature to include in its title, in the act of 1917, the words, "street railways" or its equivalent, is to my mind of much more serious import. The contention has been given serious consideration, particularly in the light of the decision of the Supreme Court in the case of *Front Street Cable Railway Company vs. Johnson*, 2 Wash. p. 112. In that case the Supreme Court uses the following language:

"We deem it to be a clear proposition also that these railways are not railroads, according to the usual and ordinary meaning of the word, to which reference must be had for the interpretation of a statute. The difference between these two valuable instruments of public conveyances was clearly pointed out in the earlier days of street railways in a contest for the possession of some of the streets

of the City of Louisville, Kentucky, between a railroad company and a street railway company."

The Supreme Court in this case quotes with approval from the *Louisville Company vs. the Louisville City Railway Company*, Duval 175, as follows:

"A street railway is not, in either the probable or legislative sense, a railroad."

While this case is not directly in point by reason of the fact that the conclusions of the court in the *Washington* case seems to have turned upon the fact that street railway companies are not and can not be the owners in fee of the road beds upon which their rails lie and that therefore no lien against their real property could have been intended. The language of the court itself is so strong as to be impressive.

50 This important question as to the use of the terms "railroad," "railway," and modification of the same terms, has received consideration at the hands of the Supreme Court of nearly every state in the Union. Conclusions have been so varied as to become almost confusing. It is my own conclusion of mind that for many of the terms and phrases of the English Language there are certain definitions marked out by clear and illuminating legal opinions, while for the great body of mankind, still other meanings attach and cling to the same phrases. Personally, I would not quite agree with Judge Stiles in the *Front Street Railway* case that "railways are not railroads according to the usual and ordinary meaning of the word." It is my observation that in common phraseology the two words are more than often interchangeably used. There have been railroads which use the word "railway" as a part of their cognomen, and yet do not own a single line of street railway. It is more accurate perhaps to say that the word "railroad" is a generic term which covers all transportation upon iron rails, but which is more commonly applied to the steam railroad. When the word "railroad" is used in conjunction with transportation lines in the city, it is more commonly qualified by adding the word "street," as a distinguishing term. Regardless of the opinion of Judge Stiles in the *Front Street Cable Railway*, the same conclusion has sometimes occurred in legislative enactments from time to time in this city.

I cannot refrain from quoting the language of the Supreme Court of our own state from the case of *Johnson vs. Wood*, 19 Wash. 444, in which the following quotation is given with approval; "It is not allowable for the purpose of invalidating a law to sit in judgment upon its title, to determine with critical acumen whether it might not have been more explicit, and so drawn as more clearly and definitely to indicate the nature of the legislation covered by it."

In the case at bar the state legislature passed an important act and adopted by way of introduction a title remarkable for its brev-

ity. The purpose of the act was "the assessment of the operating property of railroads." Immediately, in the beginning of the act, the term "railroad" is defined with clarity and in a manner so conclusive as to leave no grounds for criticism. 51 The contention of counsel is, in effect, that although they have not been misled by its inaccuracy, if it can be considered such, they may with propriety assert its validity after *its* general observance of its provisions by the public, including themselves, covering a period of more than ten years. In oral argument it was conceded that if the state legislature had, at the same session, by prior enactment, interpreted, as it has within the body of its act, the meaning of the word "railroad," that the present act as subsequent legislation, would have been beyond question. It has seemed to me that the argument, as compelling as it may be to the legal mind, is extremely technical. I am rather inclined to the view that this act should be interpreted rather in the light of the common and general use which is made of the term "railroad" by the general public. That is to say, that the word as here used is, in its general meaning, of being inclusive of all transportation lines for street railway or steam railroads. In my judgment the tax as levied should stand.

A decree may be entered in accordance with the foregoing opinion.

Dated this 20th day of October, 1920. Clay Allen, Judge.

[File endorsement omitted.]

52 In the Superior Court of the State of Washington for King County.

[Title omitted.]

Motion for Decree.

The court in the above entitled cause having refused to enter a decree in accordance with the prayer of the complaint, adjudging the assessment and tax therein complained of to be null and void because in conflict with the Constitution of the State of Washington and Fourteenth Amendment to the Constitution of the United States, so far as the plaintiff and its property are concerned, the plaintiff, without waiving its request for such decree, hereby requests the court to enter the decree hereto annexed, so as to protect the rights of the plaintiff as between itself and The City of Seattle, and that the court retain jurisdiction of this cause for the purpose of affording such protection. James B. Howe, Hugh A. Tait, Attorneys for Plaintiff.

53 In the Superior Court of the State of Washington for King
County.

[Title omitted.]

Proposed Decree.

[Filed Nov. 30, 1922.]

This cause coming on for hearing this 30th day of November, 1920, the plaintiff having proposed Findings of Fact and Conclusions of Law to be made and entered by the court, and the court having refused each and every Finding of Fact proposed by the plaintiff and each and every Conclusions of Law proposed by the plaintiff as a whole and also as separate and distinct Findings of Fact and Conclusions of law, and having also refused to make any Findings of Fact or Conclusions of law, does now order adjudge and decree as follows:

I. The tax sought to be enjoined by the plaintiff and the City of Seattle is a legal tax and lien upon and against the property sold by the plaintiff to the City of Seattle, possession whereof was delivered on the 31st day of March, 1919, and such tax, with interest, shall be paid by the plaintiff and the City of Seattle in the following proportions, to wit: One-fourth thereof shall be paid by the plaintiff and three-fourths thereof by the City of Seattle.

II. Upon payment of one-fourth of the amount of such tax, with interest, by the plaintiff, the plaintiff and all of its property shall be relieved of and from all liability whatsoever on account of such tax and every portion thereof. The City of Seattle and its property, upon payment of three-fourths of the amount of such tax, with interest, shall be relieved of and from all liability whatsoever
54 on account of such tax and every portion thereof.

III. The defendant, William A. Gaines, as Treasurer of King County, his deputies and agents, shall enforce the collection of such tax, with interest and costs, if the same shall not be paid within — days after this date, by levying upon sufficient property of the plaintiff to satisfy the plaintiff's proportion of such tax, namely, one-fourth thereof, with interest and costs, and by levying upon so much of the street railway property sold by the plaintiff to the City of Seattle as shall be sufficient to satisfy three-fourths of the amount of such tax, with interest and costs.

IV. The court retains jurisdiction of this case for the purpose of enforcing this decree.

V. The defendants other than the City of Seattle are hereby awarded their costs and disbursements to be taxed.

Dated November —, 1920. — — —, Judge.

Offered and refused. Exceptions allowed. Allen, Judge.

[File endorsement omitted.]

55 In the Superior Court of the State of Washington for King County.

[Title omitted.]

Motion for Findings of Fact, etc.

Now comes the above named plaintiff, and, prior to the making of any Findings of Fact or Conclusions of law by the court in the above entitled suit, and prior to the entry of any Decree therein, requests the court to make each and every Finding of Fact and Conclusion of Law set out in the attached Findings of Fact and Conclusions of law, each of which proposed Findings of Fact and Conclusions of Law, is hereby separately proposed and each conclusions of Law is hereby separately proposed by the plaintiff. James B. Howe, Hugh A. Tait, E. L. Crider, N. W. Brockett, Attorneys for Plaintiff.

56 In the Superior Court of the State of Washington for King County.

[Title omitted.]

Proposed Findings of Fact and Conclusions of Law.

[Filed Nov. 30, 1920.]

This suit was duly brought on for hearing in the above entitled court and, after the introduction of evidence in behalf of the respective parties and argument thereon, the court took the cause under consideration, and now, on this — day of November, 1920, the court makes the following Findings of Fact and Conclusions of Law, to wit:

Findings of Fact.

I. On the 31st day of December, 1918, the City Council of The City of Seattle passed Ordinance No. 39025, entitled, "An Ordinance relating to and specifying and adopting a plan or system of additions and betterments to, and extensions of, the existing municipal street railway system owned and operated by the City of Seattle, providing for the acquisition of and payment for certain street railway lines and street railway property and equipment, and issuing bonds in payment therefor, and providing for the creation of, and creating, a special fund to pay the principal and interest of such bonds." Such ordinance was approved by the Mayor of The City of Seattle on the 31st day of December, 1918, filed in the office of the City Comptroller and ex-officio City Clerk on the same day, and was duly published. It took effect thirty days after its approval, and ever since said date has been in full force and effect.

57 II. On the 31st day of December, 1918, the City Council of the City of Seattle also duly passed Ordinance No. 39069, entitled, "An Ordinance relating to the municipal street railway system of the City of Seattle, providing for the acquisition of certain street railway lines property and equipment as an addition and betterment thereto and extension thereof; and specifying the terms, and authorizing the making, of certain contracts in connection therewith." Such ordinance was duly approved by the Mayor of The City of Seattle on the 8th day of January, 1919, filed on the same day in the office of the City Comptroller and ex-officio City Clerk and was duly published. It took effect on the 9th day of February, 1919, and ever since said date has been in full force and effect.

III. Pursuant to the provisions of Ordinance No. 39025 and Ordinance No. 39069 there was filed in the office of the City Comptroller of The City of Seattle on the 30th day of December, 1918, an inventory bearing the City Comptroller's file number 72055, containing a description of the property to be conveyed by the plaintiff to The City of Seattle, and on the 10th day of February, 1919, the plaintiff and The City of Seattle, pursuant to such ordinance, executed a contract for the conveyance of such property by the plaintiff to the city, and the delivery to the plaintiff of the bonds mentioned in such ordinances.

A duplicate of such inventory was marked "Exhibit A" and attached to and made a part of such contract, and such contract and exhibit were on or about the 10th day of February, 1919, filed for record and recorded in the office of the Auditor of King County, State of Washington, at page 1 in volume 1053 of Deeds:

IV. Ordinance No. 39069 of The City of Seattle and the contract executed pursuant thereto contained the following provision:

"Provided, that state, county and municipal taxes levied against the property for the year 1919 shall be paid before the same shall become delinquent by the respective parties hereto in amounts proportional to the respective periods of time that said parties are respectively in possession of said property during the year 1919."

58 V. On the 31st day of December, 1918, Frank A. Twitchell, a citizen and taxpayer of The City of Seattle, instituted suit in the Superior Court of the State of Washington for King County against The City of Seattle and this plaintiff, to enjoin the consummation of the sale of the property mentioned in said ordinances to the city and the issue by the City of the bonds therein provided for, and on the 14th day of January, 1919, the Superior Court of the State of Washington for King County entered a decree in favor of this plaintiff and The City of Seattle, and dismissed the complaint of said Frank A. Twitchell and the intervening complaint of one Charles E. Horton who had intervened in such suit. Thereafter an appeal to the Supreme Court of the State of Washington from such decree was taken by the said Frank A. Twitchell and the said Charles E. Horton, and on the 5th day of March, 1919, the Supreme Court of the State rendered an opinion confirming the de-

of the Superior Court, and thereafter the remittitur from the Supreme Court was filed in the Superior Court in accordance with such opinion.

VI. In the month of March, 1919, and thereafter, until the 1st day of August, 1919 Clark R. Jackson was the duly qualified and acting State Tax Commissioner for the State of Washington. Between March 15, 1919 and March 31, 1919, Clark R. Jackson, as State Tax Commissioner, caused to be entered upon a book kept for that purpose in his office, for the first time, the name "Puget Sound Traction, Light & Power Company," followed by the notation, "1919 personal property \$12,000,000.00." On the 15th day of March, 1919, the State Tax Commissioner mailed to the County Assessor of King County a letter, of which the following is a copy:

Mr. Frank W. Hull, County Assessor, Seattle, Wash.

DEAR SIR: This office has this day made a valuation upon the street railway operating property of the Puget Sound Traction, Light & Power Company, for the year 1919.

This assessment covers only the street railway operating property and you will proceed to value and assess all property of the Puget Sound Traction, Light & Power Company heretofore valued and assessed by this office with the exception of that property described in a certain inventory filed in the office of the City Comptroller on the 30th day of December, 1918, and bearing Comptroller's file No. 72055. Very truly yours, Clark R. Jackson, State Tax Commissioner." C. R. J.—S.

VII. Prior to the 15th day of March, 1919, the State Tax Commissioner wrote the Attorney General of the state a letter of which the following is a copy:

"March 8, 1919.

Hon. L. L. Thompson, Attorney General, Olympia, Washington.

DEAR SIR: This office desires your opinion in regard to the question presented by the following state of facts:

This office under the law, makes an assessment against the property of the Puget Sound Traction, Light & Power Company. The City of Seattle has contracted for the purchase of the street railway lines and street railway property and equipment of the Puget Sound Traction, Light & Power Company. The Supreme Court of this state has upheld the validity of the bonds to be issued for the purchase of this property, and the deal will probably be completed within a short time, and the title will pass.

I am advised by the City Attorney that the details of the transaction will in all probability be completed before the 1st of April.

The ordinance authorizing the purchase of the lines provides that "State, county and municipal taxes levied against the property for the year 1919 shall be paid before the same shall become delinquent by the respective parties hereto in amounts proportional to the respective periods of time that the said parties are respectively in possession of said property during the year 1919."

Section 9152 of R. & B. Code provides: "* * * All operating property of street railways shall be assessed and taxed as personal property."

Section 9101 of R. & B. Code provides: "* * * All personal property in this state subject to taxation shall be listed and assessed every year with reference to its value on the 1st day of March preceding the assessment."

Section 9235 of R. & B. Code provides: "* * * The taxes assessed upon personal property shall be a lien upon all the real and personal property of the person assessed from and after the date upon which such assessment is made and no sale or transfer of either real or personal property shall in any way affect the lien of such taxes upon such property."

Section 8147 of R. & B. Code contains an evident error but we believe that the statute is meant to read that between the first day of March and the first day of June, the tax commissioner shall ascertain and determine the value of each railroad company in the state. The term railroad company under subdivision six of section 9142 is defined to include property of street railway companies.

Section 9145 of R. & B. Code provides that "Every railroad Company operating in this state shall between the first day of January and the first day of April in each year * * * make and file with the commissioner" a report containing the information such as the commissioner may require.

Section 9147 also provides that every company shall be entitled on its own motion to hearing and to present evidence before such commissioner at any time between the first day of April and the first day of May relating to the value of the property of such company. This section also provides, "The value of property of railroads for assessment shall be made as of the same time and in like manner as the value of the general property of the state is ascertained and determined."

The question here presented is as follows:

1. In view of the fact that the report upon which the assessment of the tax commissioner is based is not required to be filed until March 30th and in view of the fact that a company is entitled under the statute to a hearing during the month of April, when after March 1st, can a valid assessment be made upon which the lien of the tax will attach.

2. If such assessment cannot be completed before title passes to the City of Seattle, should any assessment be made for the year 1919 against this property. In this connection it will be noted that a private owner will have been in possession of the property for a portion of the year 1919.

I might add that it has always been the practice of this office to make the assessments on this class of property date as of May 31st. Respectfully yours, C. R. Jackson, State Tax Commissioner. CRJ-S."

VIII.

The attempted assessment made by the State Tax Commissioner of the operating street railway property of the plaintiff did not assess the operating real property and the operating personal property of the plaintiff separately, but combined such real and personal property in a mass and placed a valuation in a lump sum so that it was and is impossible to ascertain the value of the real property separately from the value of the personal property and a very large portion of such operating street railway property consisted of real estate owned in fee by the plaintiff and described by metes and bounds in the Comptroller's file No. 72055 referred to by the State Tax Commissioner.

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IX.

At the time of making the alleged assessment by the State Tax Commissioner the plaintiff had not filed its annual report for the year ending December 31, 1918, with the State Tax Commissioner, nor at such time had the time for filing such report by the plaintiff expired.

X.

In the month of March, 1919, the State Tax Commissioner did not assess or attempt to assess the operating property of any railroad company or street railroad company except the operating street railway property of this plaintiff in the City of Seattle, and neither the State Tax Commissioner nor his predecessors in office prior to the year 1919, assessed or attempted to assess the operating property of railroads or street railroads during the month of March in any year or prior to the month of May in any year, and in making the alleged assessment of the operating street railway property of the plaintiff in the City of Seattle for the year 1919 the State Tax Commissioner singled out the plaintiff and its property and treated the plaintiff and its property in a different manner from that in which any other similar company and similar property was treated. At the time of making the alleged assessment the State Tax Commissioner did not assess the operating street railway property of the plaintiff in the County of Whatcom, which street railway property the plaintiff was then operating in the County of Whatcom; nor did the State Tax Commissioner during the month of March, 1919, make any assessment or attempt to make any assessment of the operating street railway property of the plaintiff in the County of Whatcom.

XI.

On the 31st day of March, 1919, the plaintiff, pursuant to the provisions of the ordinances of The City of Seattle hereinbefore mentioned, and the contract between the plaintiff and The City of Seattle executed pursuant to such ordinances, did execute and deliver to The City of Seattle a deed and bill of sale conveying all of the real

63 and personal property described in the inventory hereinbefore mentioned, filed in the office of the City Comptroller of The City of Seattle, and bearing Comptroller's file No. 72055, with certain slight corrections by such conveyance made in such inventory, and such conveyance was on the 31st day of March, 1919 duly recorded in volume 1059 of Deeds at page 1, and in volume 60 of Miscellaneous Records at page 229, in the office of the Auditor of King County, State of Washington, and on the same day possession of the property was delivered by the plaintiff to The City of Seattle.

XII.

In the month of April, 1919, the plaintiff and The City of Seattle protested against the alleged assessment made by the State Tax Commissioner, and claimed that he had no jurisdiction to make any assessment during the month of March, 1919, but the State Tax Commissioner overruled such objection, and thereafter the State Board of Equalization, over the protest of the plaintiff and The City of Seattle that such property was exempt from taxation, certified the same to the defendant Frank W. Hull as Assessor of King County.

XIII.

In the month of December, 1919, the plaintiff instituted this suit against the above named defendants to enjoin them from taking any steps whatsoever to enforce the alleged assessment and the levy of the taxes thereon, except to cancel all steps taken by them, and that they be enjoined from the collection or enforcement of any and all taxes levied upon such pretended assessment and that such pretended assessment and all subsequent entries be cancelled, and prior to the final determination of the case they be enjoined from taking any further steps founded upon the pretended assessment; that if any portion of the alleged tax be held valid then that the City of Seattle and the plaintiff should be decreed to pay the same in the proportion specified in the contract and conveyance hereinbefore mentioned. That the final decree in the suit adjudge that all of the property was exempt from taxation.

I.

The act of the legislature, approved March 6, 1907, Laws of Washington, 1907, page 132, entitled, "An Act to provide for the assessment of the operating property of railroads, was and is, as applied to the plaintiff and its property, unconstitutional and void because the same conflicts with the Constitution of the State of Washington and with the Fourteenth Amendment to the Constitution of the United States, in that it deprives the plaintiff of its property without due process of law and denies it the equal protection of the law.

II.

The act of the legislature of the State of Washington, approved February 21, 1911, Laws of Washington, page 62, entitled "An Act to amend Section 12 of Chapter 78, Session Laws of 1907, relating to the assessment of the operating property of railroads, approved March 6, 1907, and declaring an emergency," as applied to the plaintiff and its property, was and is unconstitutional and void under the Constitution of the State of Washington, and because in conflict with the Fourteenth Amendment to the Constitution of the United States, so far as the same affects the plaintiff and its property, because it deprives the plaintiff of its property without due process of law and denies to it the equal protection of the law in contravention with such Fourteenth Amendment.

III.

The act of 1907 hereinbefore mentioned is unconstitutional and void because it conflicts with Section 3, Article VII, of the Constitution of the State of Washington, and Section 6 of such act is unconstitutional and void because the subject of Street railways is not expressed in the title, and Section 6 is beyond the scope of the title of the act and is void under Section 19, Article II, of the Constitution of the state.

IV.

The proviso added to Section 12 of the act of 1907, made by the law of Washington of 1911, page 62, which proviso is in the following words:

65 "Provided, that all of the operating property of street railroads shall be assessed and taxed as personal property," is unconstitutional and void, because it is in conflict with Section 12, Article 1, Section 19, Article II, and Section 3, Article VII, all of the Constitution of the State of Washington, and also because it is in conflict with the Fourteenth Amendment to the Constitution of the United States, in that such proviso deprives the plaintiff of its property without due process of law and denies to it the equal protection of the law in contravention of such Fourteenth Amendment.

V.

The administration of such acts by the State Tax Commissioner so far as the plaintiff and its property are concerned, was and is in violation of the Constitution of the State of Washington, and was and is in conflict and forbidden by the Fourteenth Amendment to the Constitution of the United States, in that such acts as administered by the State Tax Commissioner operated to deprive the plaintiff of its property without due process of law and to deny it the equal protection of the law.

VI.

That the attempted assessment of the property in question by the State Tax Commissioner and all steps subsequently taken, based upon such assessment, are and were illegal and void and the plaintiff and the City of Seattle each are entitled to a decree perpetually enjoining and restraining the defendants from taking any steps whatsoever to collect any tax based upon such alleged assessment, and are entitled to a decree cancelling such alleged assessment and all entries in the tax records made subsequent thereto, relating to the plaintiff and said property.— —, Judge.

Findings and Conclusions offered and refused and exceptions allowed. Allen, Judge.

Copy of within Motion received and service acknowledged this 30th day of Nov. 1920. F. C. Brown and H. A. Hanson, Attorneys for Deft. Walter F. Meier, Robert H. Evans, Attys., City Seattle.

[File endorsement omitted.]

66 In the Superior Court of the State of Washington, for King County.

[Title omitted.]

Plaintiff's Exceptions.

[Filed Dec. 10, 1920.]

Now comes the above named plaintiff, Puget Sound Traction, Light & Power Company, who is also a cross-defendant in the above entitled cause and on this 10th day of December, 1920, filed the following exceptions:

I.

Plaintiff excepts to the refusal of the court in the above entitled cause to make each of the following Findings of Fact requested by the plaintiff to be made by the court prior to the entry of any decree therein, to-wit:

1. Plaintiff excepts to the refusal of the court to make Finding of Fact No. I requested by the plaintiff.
2. Plaintiff excepts to the refusal of the court to make Finding of Fact No. II requested by the plaintiff.
3. Plaintiff excepts to the refusal of the court to make Finding of Fact No. III requested by the plaintiff.
- 67 4. Plaintiff excepts to the refusal of the court to make Finding of Fact No. IV requested by the plaintiff.
5. Plaintiff excepts to the refusal of the court to make Finding of Fact No. V. requested by the plaintiff.
6. Plaintiff excepts to the refusal of the court to make Finding of Fact No. VI requested by the plaintiff.

7. Plaintiff excepts to the refusal of the court to make Finding of Fact No. VII requested by the plaintiff.
8. Plaintiff excepts to the refusal of the court to make Finding of Fact No. VIII requested by the plaintiff.
9. Plaintiff excepts to the refusal of the court to make Finding of Fact No. IX requested by the plaintiff.
10. Plaintiff excepts to the refusal of the court to make Finding of Fact No. X requested by the plaintiff.
11. Plaintiff excepts to the refusal of the court to make Finding of Fact No. XI requested by the plaintiff.
12. Plaintiff excepts to the refusal of the court to make Finding of Fact No. XII requested by the plaintiff.
13. Plaintiff excepts to the refusal of the court to make Finding of Fact No. XIII requested by the plaintiff.

II.

Plaintiff excepts to the refusal of the court to make each of the Conclusions of Law which the plaintiff requested the court to make prior to the entry of any decree therein, to-wit:

1. Plaintiff excepts to the refusal of the court to make Conclusion of Law No. I requested by the plaintiff.
2. Plaintiff excepts to the refusal of the court to make Conclusion of Law No. II requested by the plaintiff.
3. Plaintiff excepts to the refusal of the court to make Conclusion of Law No. III requested by the plaintiff.
- 68 4. Plaintiff excepts to the refusal of the court to make Conclusion of Law No. IV requested by the plaintiff.
5. Plaintiff excepts to the refusal of the court to make Conclusion of Law No. V requested by the plaintiff.
6. Plaintiff excepts to the refusal of the court to make Conclusion of Law No. VI requested by the plaintiff.

III.

Plaintiff further excepts to the decree made and entered by the court on the 10th day of December, 1920, and to each and every part of such decree, and especially excepts to that part of said decree which, after dismissing the complaint of the plaintiff, refuses to decree that the plaintiff and The City of Seattle, upon the assumption that the tax sought to be enjoined was a valid lien, should pay the same in the proportions as follows, to-wit: The plaintiff three-fourths with interest thereon, and The City of Seattle one-fourth with interest thereon, the obligation to pay which, in the event that such tax should be held valid, was pleaded in the complaint, cross-complaint and the answer of the defendants to the complaint and cross-complaint.

IV.

Plaintiff further excepts to the refusal of the court, after having held the tax sought to be enjoined a valid lien upon the property sold by the plaintiff to The City of Seattle and without prejudice to

the right of the plaintiff to test the legality of such tax, to enter the decree submitted by the plaintiff to the court prior to the entry of the decree which was entered by the court in the above entitled cause. James B. Howe, Hugh A. Tait, E. L. Crider, N. W. Brockett, Attorneys for Plaintiff.

Exceptions noted and allowed. Allen, Judge.

[File endorsement omitted.]

69 In the Superior Court of the State of Washington for King County.

[Title omitted.]

Judgment.

[Filed Dec. 10, 1920.]

Be it remembered that the above entitled cause came on duly and regularly for hearing before the above entitled court on the 7th day of June, 1920, Honorable Clay Allen, Judge, plaintiff appearing by James B. Howe, Esq., its attorney, The City of Seattle, defendant and cross-complainant, appearing by Walter F. Meier, Corporation Counsel, and Robert H. Evans and Thomas J. L. Kennedy, Assistant Corporation Counsel, its attorneys, defendants, The County of King, Frank W. Hull, as Assessor, Norman M. Wardall, as Auditor, and William A. Gaines, as Treasurer respectively thereof, appearing by Fred C. Brown, Prosecuting Attorney, and Howard A. Hanson, Deputy Prosecuting Attorney, the cause having proceeded to trial, evidence having been introduced for and in behalf of the respective parties, and the hearing of said cause having been concluded, and after argument of counsel, the court took said cause under advisement and thereafter filed in said cause its memorandum decision and now being fully advised in the premises finds the issues

70 herein in favor of the defendants The County of King, and Frank W. Hull, as Assessor, Norman M. Wardall as Auditor, and William A. Gaines as Treasurer respectively thereof, and against plaintiff Puget Sound Traction, Light & Power Company and against The City of Seattle, defendant and cross-complainant, Now, Therefore, it is hereby

Ordered, adjudged and decreed that the plaintiff and cross-complainant The City of Seattle take nothing by this action, and that the same be and hereby is dismissed with prejudice.

It is further ordered, adjudged and decreed that the court does not adjudicate herein any rights relative to the apportionment of taxes as between plaintiff and The City of Seattle claiming to have been created by provisions of the contract of sale of the street railway system by plaintiff to The City of Seattle, such rights not being at issue herein but such rights are reserved for future determination as between the parties thereto.

It is further ordered, adjudged and decreed that defendants King County and Frank W. Hull as Assessor, Norman M. Wardall, as Auditor and William A. Gaines, as Treasurer respectively thereof, do have and recover against said plaintiff and against The City of Seattle, defendant and cross-complainant, their costs herein taxed at \$41.80.

To all of which plaintiff and The City of Seattle, defendant and cross-complainant excepts, which exception is hereby allowed.

Done in open Court this 10 day of December, 1920. Clay Allen, Judge.

Due service of the within Judgment acknowledged and receipt of copy thereof admitted this 8 day of Dec., 1920. James B. Howe, Atty. for Plff. ———, Attorneys for City of Seattle.

Judgment Number 60665 Entered in execution docket Vol. 61, Page 193.

Copy of within received Dec. 8, 1920. Walter F. Meier, Corporation Counsel.

[File endorsement omitted.]

71 In the Superior Court of the State of Washington for King County.

[Title omitted.]

Plaintiff's Motion for New Trial.

[Filed Dec. 10, 1920.]

Now comes the above named plaintiff, Puget Sound Power & Light Company (formerly named Puget Sound Traction, Light & Power Company), and moves the court for a new trial in the above entitled case for the following causes materially affecting the substantial rights of the plaintiff:

I.

Insufficiency of the evidence to justify the decision and decree.

II.

Because the decision and decree, upon the undisputed evidence, is against law.

III.

Because the decision and decree sustains the law of Washington entitled, "An Act to provide for the assessment of the operating property of railroads," approved March 6, 1907, Laws of Washington, 1907, page 132, and applied such law to the plaintiff and its prop-

erty against the contention of the plaintiff upon the trial that such law was unconstitutional and void under the Constitution of the State of Washington and under the Fourteenth Amendment to the Constitution of the United States so far as the same affected the plaintiff and its property.

IV.

Because of error of law occurring at the trial and excepted to at the time by the plaintiff.

V.

Because the decision of the court upheld, as applied to the plaintiff and its property, the act of the legislature of the State of Washington, approved February 21, 1911, Laws of Washington, page 72 62, entitled, "An act to amend Section 12 of Chapter 78, Session Laws of 1907, relating to the assessment of the operating property of railroads, approved March 6, 1907, and declaring an emergency," and because the decision sustains the proviso of such act of 1911 added to Section 12 of the act of March 6, 1907, which decision of the court was against the claim of the plaintiff that such act and the proviso therein mentioned were unconstitutional and void under the Constitution of the State of Washington and as applied to the plaintiff and its property were unconstitutional and void because they deprived the plaintiff of its property without due process of law and denied it the equal protection of the law in contravention of the Fourteenth Amendment to the Constitution of the United States.

VI.

Because such act of 1907 is unconstitutional and void in that it conflicts with Section 3, Article VII, of the Constitution of the State of Washington, and the purported assessment made thereunder is void.

VII.

Because Section 6 of such act of 1907 is in conflict with Section 19, Article II, of the Constitution of the State of Washington in that the subject of street railways is not expressed in the title of the act and the purported assessment based on such act is, therefore, void.

VIII.

Because such act of 1911 is in conflict with Section 3, Article VII, and Section 19, Article II, of the Constitution of the State of Washington, and the purported assessment made thereunder is void.

IX.

Because the proviso added to Section 12 of the act of 1907, made by the law of Washington of 1911, page 62, which proviso is in the following words:

"Provided, that all of the operating property of street railroads shall be assessed and taxed as personal property,"

73 is unconstitutional and void because it is in conflict with Section 12, Article I, Section 19, Article II, and Section 3, Article VII, all of the Constitution of the State of Washington, and also because it is in conflict with the Fourteenth Amendment to the Constitution of the United States, in that such proviso deprives the plaintiff of its property without due process of law and denies it the equal protection of the law in contravention of such Fourteenth Amendment, all as claimed by the plaintiff upon the trial of the above entitled cause, which claim of the plaintiff the decision of the court overruled and denied.

X.

Because Section 1 of such act of the legislature of the State of Washington, approved February 21, 1911, entitled, "An Act to amend Section 12, of Chapter 78, Session Laws of 1907, relating to the assessment of the operating property of railroads approved March 6, 1907, and declaring an emergency, amending Section 12 of the act of March 6, 1907, entitled, "An act to provide for the assessment of the operating property of railroads," by adding to such Section 12 of the act of March 6, 1907, the following words:

"Provided, that all of the operating property of street railroads shall be assessed and taxed as personal property,"

and the administration of such act by the State Tax Commissioner, and the administration of such act of 1907, all as applied to the plaintiff and its property, did not constitute reasonable classification but was an arbitrary selection of the plaintiff and its property made without any substantial basis, and resulting under similar conditions in the imposition upon the plaintiff and its property a more onerous burden of taxation than was imposed upon any and every similar owner of any and all similar property in the State of Washington, and denying to the plaintiff and its property all exemptions and privileges which were granted and extended to all of the same class as the plaintiff, except the plaintiff, and to all property of same class as the property of the plaintiff, except

74 the property of the plaintiff, all of which the plaintiff claimed upon the trial of the cause deprived the plaintiff of its property without due process of law and denied it the equal protection of the law in contravention of the Fourteenth Amendment to the Constitution of the United States, and also in contravention of Sections 3, and 12, Article I, of the Constitution of the State of Washington, which contentions of the plaintiff the decision of the court overruled and denied.

XI.

Because notwithstanding the claim of the plaintiff to the protection of the Fourteenth Amendment to the Constitution of the United States for the reasons set forth in Paragraph- IX and X of this motion, the decree denies such claim of the plaintiff and denies the plaintiff the protection and benefit of the Fourteenth Amendment to the Constitution of the United States, which protection and benefit the plaintiff now again invokes to prevent its being deprived of its property without due process of law and its being denied the equal protection of the law contrary to the Fourteenth Amendment to the Constitution of the United States.

XII.

Because the decree is contrary to the facts set forth and admitted by the pleadings in the above entitled cause, and the decree denies the relief required by the facts admitted to the pleadings. James V. Howe, Hugh A. Tait, Edgar L. Crider, Norwood W. Brockett, Attorneys for Plaintiff.

Copy of within Motion for new trial received and service acknowledged this 10th day of December 1920. F. C. Brown, Howard A. Hanson, Attorneys for Defendant County of King et al.

Copy of within received Dec. 10, 1920. Walter F. Meier, Corporation Counsel, Attorney for Deft. City of Seattle.

[File endorsement omitted.]

75 In the Superior Court of the State of Washington for King County.

[Title omitted.]

Plaintiff's Notice of Hearing of Plaintiff's Motion for New Trial.

[Filed Dec. 10, 1920.]

To Messrs. James B. Howe, Hugh A. Tait, Edgar L. Crider and Norwood W. Brockett, Attorneys for plaintiff, and for Messrs. Walter F. Meier, Corporation Counsel, and Robert H. Evans and T. J. L. Kennedy, Assistant Corporation Counsel, Attorneys for the City of Seattle, defendant and cross-complainant:

Please take notice that the issue of law on plaintiff's motion for new trial herein will be brought for trial before the Hon. Clay Allen Judge of the above entitled court, on Tuesday, the 14th day of December, 1920, at 9:30 A. M. or as soon thereafter as counsel can be heard. Fred C. Brown, Howard A. Hanson, Attorneys for

Defendants Frank W. Hull, as Assessor of King County; Norman M. Wardall, as Auditor of King County, and William A. Gaines, as Treasurer of King County.

76 To the Clerk of said Court:

Please note the above named cause for Tuesday, December 14, 1920, at 9:30 A. M., in Department No. 6, before Judge Clay Allen. Fred C. Brown, Howard A. Hanson, Attorneys for Defendants Frank W. Hull, as Auditor of King County; Norman M. Wardall, as Auditor of King County, and William A. Gaines, as Treasurer of King County.

We hereby acknowledge receipt of true copy of within note and notice, and admit due service thereof this 10th day of December, 1920. James B. Howe et al., Attorneys for Plaintiff. — — —, Attorneys for Defendant The City of Seattle.

Copy of within received Dec. 10, 1920. Walter F. Meier, Corporation Counsel.

[File endorsement omitted.]

77 In the Superior Court of the State of Washington for King County.

[Title omitted.]

Cross-complainant's Motion for New Trial.

[Filed Dec. 11, 1920.]

Comes now The City of Seattle, Cross-Complainant, and moves the court for a new trial in the above entitled case, for the following reasons:

I.

Insufficiency of the evidence to justify the decision and decree.

II.

Because the decision and decree are contrary to and against the law.

III.

Error in law occurring at the trial and duly excepted to by cross-complainant. Walter F. Mier, Corporation Counsel; Robert H. Evans, Assistant, Attorneys for Cross-complainant, The City of Seattle.

[File endorsement omitted.]

78 In Superior Court of the State of Washington for King County.

[Title omitted.]

Order Overruling Motions of Plaintiff and of Cross-complainant for New Trial.

[Filed Dec. 14, 1920.]

This matter coming on duly and regularly for hearing on this 14th day of December 1920, before the Honorable Clay Allen, Judge of the above entitled court, upon the motion of plaintiff and upon the motion of cross-complainant for new trial herein, and after argument of counsel the court being fully advised in the premises,

It is ordered that said motions for new trial be, and the same are hereby, overruled and denied.

To all of which plaintiff and cross-complainant except, which exceptions are hereby severally allowed.

Done in open Court this 14th day of December, 1920. Clay Allen, Judge.

[File endorsement omitted.]

79 In the Superior Court of the State of Washington for King County.

No. 139,815.

[Title omitted.]

Plaintiff's Notice of Appeal.

[Filed Dec. 21, 1920.]

To the city of Seattle, as Defendant and as cross-complainant, and to the county of King, Frank W. Hull, as Assessor of King County; Norman M. Wardall, as Auditor of King County, and William A. Gaines, as Treasurer of King County, and each of them, as defendants and as cross-defendants:

You and each of you are hereby notified that the above named plaintiff, Puget Sound Power & — Company (formerly named Puget Sound Traction Light & Power Company), as plaintiff and cross-defendant, hereby appeals to the Supreme Court of the State of Washington from the decree of the Superior Court of the State of Washington for King County, made and entered in the above entitled cause on the 10th day of December, 1920, and from the whole thereof, upon the following grounds, among others to wit:

I.

Insufficiency of the evidence to justify the decision and decree.

II.

Because the decision and decree, upon the undisputed evidence, is against law.

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III.

Because the decision and decree sustains the law of Washington entitled, "An Act to provide for the assessment of the operating property of railroads," approved March 6, 1907, Laws of Washington, 1907, page 132, and applied such law to the plaintiff and its property against the contention of the plaintiff upon the trial that such law was unconstitutional and void under the Constitution of the State of Washington and under the Fourteenth Amendment to the Constitution of the United States so far as the same affected the plaintiff and its property.

IV.

Because of error of law occurring at the trial and excepted to at the time by the plaintiff.

V.

Because the decision of the court upheld, as applied to the plaintiff and its property, the act of the legislature of the State of Washington, approved February 21, 1911, Laws of Washington, page 62, entitled "An Act to amend Section 12 of Chapter 78, Session Laws of 1907, relating to the assessment of the operating property of railroads, approved March 6, 1907, and declaring an emergency," and because the decision sustains the proviso of such act of 1911 added to Section 12 of the act of March 6, 1907, which decision of the Court was against the claim of the plaintiff that such act and the proviso therein mentioned were unconstitutional and void, under the Constitution of the State of Washington and as applied to the plaintiff and its property were unconstitutional and void because they deprived the plaintiff of its property without due process of law and denied it the equal protection of the law in contravention of the Fourteenth Amendment to the Constitution of the United States.

VI.

Because such act of 1907 is unconstitutional and void in that it conflicts with Sections 2 and 3 of Article VII, of the Constitution of the State of Washington, and the purported assessment made thereunder is void.

Because Section 6 of such act of 1907 is in conflict with Section 19, Article II, of the Constitution of the State of Washington, in that the subject of street railways is not expressed in the title of the act and the purported assessment based on such act is, therefore, void.

VIII.

Because such act of 1911 is in conflict with Sections 2 and 3 Article VII and Section 19, Article II, of the Constitution of the State of Washington, and the purported assessment made thereunder is void.

IX.

Because the proviso added to Section 12 of the act of 1907 made by the law of Washington of 1911, page 62, which proviso is in the following words—

“Provided that all of the operating property of street railroads shall be assessed and taxed as personal property,”

is unconstitutional and void because it is in conflict with Section 12, Article I, Section 19, Article II, and Section- 2 and 3, Article VII, all of the Constitution of the State of Washington, and also because it is in conflict with the Fourteenth Amendment to the Constitution of the United States, in that such proviso deprives the plaintiff of its property without due process of law and denies it the equal protection of the law in contravention of such Fourteenth Amendment, all as claimed by the plaintiff upon the trial of the above entitled cause, which claim of the plaintiff the decision of the court overruled and denied.

X.

Because Section 1 of such act of the legislature of the State of Washington, approved February 21, 1911, entitled, “An Act to amend Section 12 of Chapter 78, Sessions Laws of 1907, relating to the assessment of the operating property of railroads, approved March 6, 1907, and declaring an emergency,” amending Section 12 of the act of March 6, 1907, entitled, “An Act to provide for the assessment of the operating property of railroads,” by adding to such Section 12 of the act of March 6, 1907, the following words—

82 “Provided, that all of the operating property of street railroads shall be assessed and taxed as personal property,”

and the administration of such act by the State Tax Commissioner, and the administration of such act of 1907, all as applied to the plaintiff and its property, did not constitute reasonable classification but was an arbitrary selection of the plaintiff and its property made

without any substantial basis, and resulting under similar conditions in the imposition upon the plaintiff and its property of a more onerous burden of taxation that was imposed upon any and every similar owner of any and all similar property in the State of Washington, and denying to the plaintiff and its property all exemptions and privileges which were granted and extended to all of the same class as the plaintiff, except the plaintiff, and to all property of the same class as the property of the plaintiff, except the property of the plaintiff, all of which the plaintiff claimed upon the trial of the cause deprived the plaintiff of its property without due process of law and denied it the equal protection of the law in contravention of the Fourteenth Amendment to the Constitution of the United States, and also in contravention of Section- 3 and 12, Article I, of the Constitution of the State of Washington, which contentions of the plaintiff the decision of the court overruled and denied.

XI.

Because notwithstanding the claim of the plaintiff to the protection of the Fourteenth Amendment to the Constitution of the United States for the reasons hereinbefore set forth, the decree denies such claim of the plaintiff and denies the plaintiff the protection and benefit of the Fourteenth Amendment to the Constitution of the United States, which protection and benefit the plaintiff now again invokes to prevent its being deprived of its property without due process of law and its being denied the equal protection of the law contrary to the Fourteenth Amendment to the Constitution of the United States.

XII.

§3 Because the decree is contrary to the facts set forth and admitted by the pleadings in the above entitled cause, and the decree denies the relief required by the facts admitted in the pleadings.

You and each of you are also further notified that the above named plaintiff, Puget Sound Power & Light Company (formerly named Puget Sound Traction, Light & Power Company) appeals to the Supreme Court of the State of Washington from the order of the Superior Court of the State of Washington for King County, made and entered in the above entitled cause on the 14th day of December, 1920, denying the motion of this plaintiff for a new trial therein, which motion was made upon each and every ground hereinbefore set forth in this Notice of Appeal, and was fully set forth in such motion for a new trial. James B. Howe, Hugh A. Tait, Edgar L. Crider, Norwood W. Brockett, Attorneys for Plaintiff and Cross-defendant, Puget Sound Power & Light Company.

Copy of within received Dec. 21, 1920. Walter F. Meier, Corporation Counsel.

Copy of within received Dec. 21, 1920. Fred C. Brown, Prosecuting Attorney.

[File endorsement omitted.]

84 In the Superior Court of the State of Washington for
King County.

[Title omitted.]

Plaintiff's Bond on Appeal.

[Filed Dec. 22, 1920.]

Know all men by these presents, That we, Puget Sound Power & Light Company, appellant in the above entitled cause, (formerly named Puget Sound Traction, Light & Power Company), a corporation created and existing under the laws of the State of Massachusetts, as principal, and the New Amsterdam Casualty Company, a corporation organized under the laws of the State of New York and authorized to transact the business of surety company in the State of Washington, as surety, are held and firmly bound unto The City of Seattle, a municipal corporation, defendant and cross-complainant, *the* The County of King, Frank W. Hull, as Assessor of King County, Norman M. Wardall, as Auditor of King County, and William A. Gaines, as Treasurer of King County, defendants in the above entitled action, in the just and full sum of two hundred dollars (\$200.00) for which sum well and truly to be paid we bind ourselves, our and each of our successors and assigns, jointly and severally, firmly by these presents.

85 Sealed with our seals and dated this 22nd day of December, 1920.

The condition of this obligation is such that whereas, a final order and judgment was entered in the above-entitled cause on December 10, 1920, dismissing the above-entitled action with prejudice, and

Whereas, thereafter, to-wit: on December 14, 1920, an order was made and entered in the above-entitled cause denying this appellant's (plaintiff and cross-defendant in said action) motion for a new trial in said cause, and

Whereas, said Puget Sound Power & Light Company heretofore — given due and proper notice that it appeals from said final order and judgment of said Superior Court entered on December 10, 1920, and the whole thereof, and also from said order of said Superior Court denying said motion for a new trial entered on December 14, 1920, to the Supreme Court of the State of Washington.

Now, therefore, if the said principal, Puget Sound Power & Light Company, a corporation will pay all costs and damages that may be awarded against said Puget Sound Power & Light Company on said appeal or on the dismissal thereof, not exceeding two hundred dollars, then this obligation shall be null and void, otherwise it shall

remain in full force and effect. Puget Sound Power & Light Company, by W. H. McGrath, Its Vice-President. By James B. Howe, Its Attorney. Attest: James B. Howe, Its Secretary. (Seal.)
86 New Amsterdam Casualty Company, by Norman Burscher, by George M. Crawford, Attorneys in Fact. (Seal.)

[File endorsement omitted.]

87 In the Superior Court of the State of Washington in and for King County.

[Title omitted.]

Cross-complainant's Notice of Appeal.

[Filed Dec. 28, 1920.]

Comes now The City of Seattle, defendant and cross-complainant above named, and appeals to the Supreme Court of the State of Washington from that final order and judgment of the Superior Court entered in the above cause on December 10th, 1920, and from the whole thereof, and also from the order of the Superior Court denying the motion of this defendant and cross-complainant for a new trial, entered on December 14th, 1920.

And The City of Seattle, defendant and cross-complainant above named, herewith serves notice of this appeal upon the plaintiff and cross-defendant Puget Sound Power & Light Company (formerly named Puget Sound Traction, Light & Power Company), and upon the defendants County of King, Frank W. Hull, as Assessor of King County, Norman M. Wardall, as Auditor of King County, and William A. Gaines, as Treasurer of King County. Walter F. Meier, Corporation Counsel; Robert H. Evans, Assistant, Attorneys for The City of Seattle, Defendant and Cross-complainant.
88

Copy of the within Notice of Appeal received and due service thereof acknowledged this 24th day of Dec., 1920. James B. Howe, Hugh A. Tait, Edgar L. Crider, Norwood W. Brockett, Attorneys for Plaintiff, Cross-deft., Puget Sound P. & L. Co.

Copy of within received Dec. 28, 1920. Fred C. Brown, Prosecuting Attorney.

[File endorsement omitted.]

89 In the Superior Court of the State of Washington for King County.

[Title omitted.]

Notice of Filing Proposed Statement of Facts.

[Filed Jan. 4, 1921.]

To the City of Seattle, as defendant and cross-complainant, and to Walter F. Meier, Thomas J. L. Kennedy, and Robert H. Evans, Esqs., attorneys for said defendant and cross-complainant, and to the County of King, Frank W. Hull, as assessor of King County; Norman M. Wardall, as auditor of King County, and William A. Gaines, as treasurer of King County, defendants, and to Fred C. Brown and Howard A. Hanson, Esqs., attorneys for said defendants:

You and each of you are hereby notified that the proposed statement of facts of plaintiff appellant in the above entitled cause has been filed in said cause in the office of the Clerk of the above entitled court this January 4th, 1921. James B. Howe, Hugh A. Tait, E. L. Crider, N. W. Brockett, Attorneys for Plaintiff, Appellant.

Copy of within Notice received and service acknowledged this 4th day of Jan., 1921. Fred C. Brown, Howard A. Hanson, Attorneys for Defendants King County et al.

Copy of within Received Dec. 4, 1920. Walter F. Meier, Corporation Counsel.

[File endorsement omitted.]

90 In the Superior Court of the State of Washington for King County.

[Title omitted.]

Stipulation as to Statement of Facts.

It is hereby stipulated between the plaintiff and the defendants and The City of Seattle, cross complainant, that the plaintiff's proposed statement of facts heretofore served and filed herein may be treated and considered as a proposed statement of facts on behalf of The City of Seattle, cross complainant and appellant herein; and that, upon the certification of said proposed statement of facts as the statement of facts of the plaintiff said statement of facts so certified may be treated as the statement of facts upon the appeal of The City of Seattle, cross complainant. James B. Howe, Hugh A. Tait,

91 Edgar L. Crider, Norwood W. Brockett, Attorneys for Plaintiff. ———, Attorneys for Defendants. Walter F. Meier, Corporation Counsel; Robert H. Evans, Assistant, Attorneys for Cross-complainant.

[File endorsement omitted.]

92 In the Superior Court of the State of Washington for King County.

[Title omitted.]

Stipulation for Certifying Statement of Facts.

[Filed Jan. 14, 1921.]

It is hereby stipulated by and between the parties to the above entitled action, through their respective attorneys, that the Statement of Facts proposed by the above named plaintiff, and, by stipulation heretofore filed, made also the proposed Statement of Facts of The City of Seattle, defendant and cross-complainant, may be signed and certified as the Statement of Facts in the above entitled cause, in accordance with the certificate thereto attached, by Honorable Austin E. Griffiths, as Judge of the above entitled court, and as successor to Honorable Clay Allen, whose term of office has expired.

Dated, January 14, 1921. James B. Howe, Hugh A. Tait, Edgar L. Crider, Norwood W. Brockett, Attorneys for Plaintiff.
93 Walter F. Meier, Robert H. Evans, Attorneys for Defendant and Cross-complainant, The City of Seattle. Malcolm Douglass, Howard A. Hanson, Attorneys for Defendants County of King et al.

[File endorsement omitted.]

94 In the Superior Court of the State of Washington for King County.

[Title omitted.]

Præcipe for Transcript of Record.

[Filed Jan. 14, 1921.]

To the Clerk of the above-entitled court:

Please prepare transcript of record on appeal in the above entitled cause, including therein copies of all papers and pleadings on file in said cause Numbered: 1, 2, 7, 9, 10, 11, 13, 14, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, & 40 excluding from such transcript the statement of facts and exhibits included therein.

James B. Howe, Hugh A. Tait, Edgar L. Crider, Norwood W. Brockett, Attorneys for Plaintiff.

[File endorsement omitted.]

95-97

Clerk's Certificate.

STATE OF WASHINGTON,
County of King, ss:

I, George A. Grant, County Clerk of King County and ex-officio Clerk of the Superior Court of the State of Washington in and for King County, do hereby certify that the foregoing is a full, true and correct Transcript of so much of the record and files in cause No. 139,815, entitled Puget Sound Traction, Light & Power Company, a corporation, vs. The City of Seattle, The County of King, et al., as I have been directed by the Appellant to transmit to the Supreme Court of the State of Washington together with the original Statement of Facts and the Exhibits thereto attached.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court this 7th day of March, 1921. George A. Grant, County Cler-, &c., By W. T. Hatt, Deputy Clerk. (Seal.)

98 In the Superior Court of the State of Washington for King County.

[Title omitted.]

Stipulation Extending Time for Serving and Filing Appellants' Briefs & Order.

[Filed Mar. 10, 1921.]

It is hereby stipulated and agreed by and between the parties, plaintiff-appellant, defendant and cross-complainant appellant, and defendants-respondents, that the time within which said plaintiff appellant and defendant and cross-complainant-appellant shall have to serve and file their respective briefs on appeal in the above entitled cause may be and the same hereby is extended to and including April 15, 1921; and it is hereby further stipulated and agreed that inasmuch as the Statement of Facts contains less than one hundred pages no abstract of record need be served or filed; but if *the* either of the parties should nevertheless desire to serve and file an abstract of record the time for serving and filing same is hereby extended to and including said April 15, 1921.

99 Dated, March 8th, 1921. James B. Howe, Hugh A. Tait, Edgar L. Crider, Norwood W. Brockett, Attorneys for Plaintiff-appellant, Puget Sound Power & Light Company. Walter F. Meier, Corporation Counsel; Robert H. Evans, Asst., Attorneys for Defendant and Cross-complainant & Appellant, The City of Seattle. Mal-

colm Douglas, Howard A. Hanson, Attorneys for Defendants-respondents.

[File endorsement omitted.]

100 In the Superior Court of the State of Washington for King County.

[Title omitted.]

Order Extending Time for Serving and Filing Briefs.

[Filed Mar. 10, 1921.]

The above entitled matter coming on to be heard upon the stipulation of the parties thereto, and it appearing to the court, from said stipulation on file in said cause, that the parties have agreed that the time within which the appellants in said cause shall have to serve and file their briefs and abstracts of record, should either of the parties elect to file an abstract of record, may be extended until and including April 15, 1921;

It is hereby ordered that the time within which the appellants in the above entitled cause shall have to serve and file their briefs be and the same hereby is extended to and including April 15, 1921: and

101 It is further ordered that no abstract of record need be served and filed herein, but if either of the parties should nevertheless elect to serve and file an abstract of record, the time within which the same shall be served is hereby extended to and including April 15, 1921.

Done in open court this 10 day of March, 1921. A. W. Frater, Judge.

[File endorsement omitted.]

102

Clerk's Certificate.

STATE OF WASHINGTON,
County of King, ss:

I, George A. Grant, County Clerk of King County and ex-officio Clerk of the Superior Court of the State of Washington in and for King County, do hereby certify that the foregoing is a full, true and correct transcript of so much of the record and files in cause No. 139,815, entitled Puget Sound Power & Light Company, a corporation, &c., vs. The City of Seattle, a municipal corporation, et al., with which is consolidated the cause of The City of Seattle, a municipal corporation, vs. Puget Sound Power & Light Company, a corporation, &c., as I have been directed by the Appellant and Cross-Respondent Puget Sound Power & Light Company to transmit to the Supreme Court of the State of Washington as a Supplemental Transcript of the record on appeal in said cause.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court this 21st day of March, 1921. George A. Grant, County Clerk, &c., By W. T. Hatt, Deputy. (Seal.)

103 & 104 16497. 16497. Filed in Supreme Court of Washington June 28, 1921. C. S. Reinhart, Clerk.
F. S. G. 13 98 15.

In the Superior Court of the State of Washington for King County.

[Title omitted.]

Plaintiff's Proposed Statement of Facts.

[Filed Jan. 4, 1921.]

Copy of within proposed statement of facts received and service acknowledged this 3d day of January, 1921. _____, Attorneys for Defendant, King County et al. _____, Attorneys for Defendant and Cross-complainant, City of Seattle.

Copy of within received Jan. 4, 1920. Fred C. Brown, Prosecuting Attorney.

Copy of within received Dec. 4, 1921. Walter F. Meier, Corporation Counsel.

Original.

[File endorsement omitted.]

Statement of Facts.

Defendant's Witnesses:	Direct.	Cross.	Re-direct.	Re-cross.
John H. Thatcher.....	13	18		
Clark R. Jackson.....	23	37	47	51
Frank W. Hull.....	55	59		
(Recalled)	63	68	70	71

Plaintiff's Exhibits:

Exhibit A.....	9	Exhibit E.....	10
" B.....	9	" F.....	10
" C.....	9	" G.....	12
" D.....	9	" H.....	61

Defendant's Exhibits:

Exhibit No. 1.....	47
Exhibit No. 2.....	31

106 In the Superior Court of the State of Washington for King County.

[Title omitted.]

Proposed Statement of Facts.

This cause coming on duly and regularly for hearing this 7th day of June, 1920, before the Honorable Clay Allen, Judge of the above entitled court, sitting in Department No. 6 thereof; the plaintiff and cross-defendant Puget Sound Traction, Light & Power Company appearing by James B. Howe, Esq., the defendant and cross-complainant City of Seattle appearing by Robert H. Evans, Esq., and the defendants and cross-defendants, County of King, Frank W. Hull, as Assessor of King County, Norman M. Wardall, as Auditor of King County, and William A. Gaines, as Treasurer of King County appearing by Howard A. Hanson, Esq., the following proceedings were had and testimony taken, to-wit:

107 The Court: Proceed, gentlemen.

Mr. Howe: Your Honor, it may be well for me to state the issues in the case. This is a suit brought by the Puget Sound Traction, Light & Power Company against the City of Seattle, the County of King, the County Assessor, the County Auditor, and the County Treasurer. The interests of the City and the company, the plaintiff, are identical, and the City has filed a cross-complaint which is practically the same as the complaint. So that in arranging the parties Your Honor will understand that while the City is named as a defendant, as a matter of fact the company and the city are waging this suit against the County of King, The Assessor of King County, and the Auditor and Treasurer of King County to have the last tax declared invalid and the officials restrained from enforcing the tax.

The case presents this question; on the 31st day of December, 1918, certain ordinances were passed by the City Council for the purpose of issuing bonds and acquiring the street railway property of the Puget Sound Traction Light & Power Company in the city by the City. One of those ordinances was approved on the same date; the remainder of the ordinances were approved early in January. Pursuant to those ordinances, during the Month of February, I think it was—anyhow, prior to the 1st of March—the City and the company entered into contracts for the purchase of the property by the City, and for the issuance of bonds. A suit was then pending by a taxpayer against the City and the Company to restrain the carrying out of that contract. The case was

108 litigated and went to the Supreme Court. On the 5th day of March, the Supreme Court rendered a decision holding all of the contracts valid, and on the 31st day of March, pursuant to the contracts, the property was conveyed by the company to the City.

It is claimed by the defendants that on the 15th day of March, the State Tax Commissioner assessed the property which was conveyed to the City. The company and the City contend that the property having been conveyed to the city it was not the subject of assessment and taxation.

The Court: The conveyance was when, Mr. Howe?

Mr. Howe: The conveyance was on the 31st day of March. The contract had been made during the month of February. The defendants claim that there was an assessment made by the State Tax Commissioner on the 15th day of March, that that attached a lien to the property, and that when the company on the 31st of March executed the deed pursuant to the contract the City took the property subject to a lien.

The contention on the part of the City and the company is several-fold; First, under the law the State Tax Commissioner had no authority to make an assessment; Second, that he had no authority to make an assessment at any time during the month of March, because if he had authority to make an assessment at all he could only make the assessment during the months of April or May; and, Third, if he did make an assessment in the form in which it was made the assessment is void because he assessed all of the property as personal property, and, as a matter of fact, 109 the property consisted of a large amount of real estate and personal property, and an assessment on both classes of property would prevent the person who owned the property from tendering a tax on either. He would have to pay a tax on both, although both were not assessable.

Your Honor will at once see that this case presents an important legal question, and that is this; assuming that the Tax Commissioner had any authority to make an assessment, if he made an assessment on both realty and personalty as a lump assessment and he made it as personalty the owner of the property would have to pay the tax on the entire property during the month of March and would be deprived of the benefit of paying the tax in two installments as he would be able to do if the real estate was assessed as real estate and the personal property assessed as personal property. Furthermore, if the property were sold to enforce a personal tax it would be sold without any redemption, and the owner of the property would be deprived of the benefit of all the laws relating to taxes upon real estate.

The pleadings admit nearly all of the facts in the case. There are some matters which are denied, but those are denied largely as legal conclusions.

Now, it is admitted by the County that whatever assessment was made was made on the 15th day of March; it is admitted that prior to that date the contracts between the City and the company had been entered into; it is admitted that on the 15th day of March the State Tax Commissioner did not have the report of the 110 company which the statute requires the company to file not later than the 1st day of April, and which report the statute says the State Tax Commissioner shall consider and take into con-

eration in making the assessment, but it is denied absolutely a matter of law by the County that he had to have that report fore him; it is admitted that all of the property has been conveyed; and it is also admitted that the purported assessment did cover all of the real and personal property which was operating property of the company and which was conveyed by the company to the City. It is contended further that in the assessment as made the only real estate which was assessed was operating property. It is also admitted and affirmatively alleged by the defendants—

The Court: Will you pardon me; you say it is admitted by the County that the only real property assessed was the operating real property? Did I understand that correctly?

Mr. Howe: Not only real, but that the only real property that was assessed was operating property. In other words, the expression "operating property" was intended to cover real estate and personalty.

The Court: Just what might be meant by that property, barns and property of that kind?

Mr. Howe: And all real estate over which the company was operating its tracks. In other words, Your Honor, if the street railway company instead of being a street railway company had been a commercial railroad the real estate which was assessed would have been assessed as real estate, but their contention is that under the law the company, being a street railway property, all of its operating property, real and personal, should be assessed and was assessed as personal property. Does Your Honor get the point?

The Court: I see the point.

Mr. Howe: My contention is on that, and the contention of the City is that the operating property, whether a railroad or whether a street railroad, must be separated into its two classes, the real operating property assessed as realty and the personal operating property assessed as personalty, and the combination of the two into one so that there was only a lump assessment rendered the assessment invalid, assuming, for the sake of argument, that the State Tax Commissioner had authority to make an assessment at all. It is alleged affirmatively in the answer of the County—and as that is very brief I will read it, Your Honor—"These defendants, and each of them, further allege on information and belief that from year to year preceding the year 1918 plaintiff had annually made return to the Tax Commissioner of the State of Washington of its property, both real and personal, within the limits of the City of Seattle, and had listed the same with said Tax Commissioner as street railway operating property, and said Tax Commissioner had, pursuant hereto, valued and assessed the same as street railway operating property; and defendants, and each of them, further allege that the real and personal property specified and mentioned in the above mentioned inventory comprised the street railway system of plaintiff in the City of Seattle, and certain real and personal property and

equipment used and useful in connection therewith, all as
112 more particularly appears in section 1 of Ordinance No.
39,069, specified and referred to in Paragraph VI of plaintiff's
complaint and in the contract of sale in said ordinance No. 39,069
set forth, and in the deed and bill of sale referred to in Paragraph XI
of complainant's complaint.

Defendants, and each of them further allege that, by reason of
the above and foregoing facts, plaintiff is estopped to assert that the
property, both real and personal, specified in said inventory, con-
tract, deed and bill of sale, did not comprise the street railway system
of plaintiff in the City of Seattle and certain real and personal prop-
erty and equipment used and useful in connection therewith, and
to assert that such street railway property and the whole thereof,
both real and personal, should not be assessed as personal property
in the manner provided by law."

So that Your Honor will see there is no dispute as to what was
assessed. It is admitted that what was assessed, assuming that an
assessment was made, contains real and personal property.

Now, when we come to the law of the case I expect to point out
to Your Honor that that assessment is invalid.

We will now offer in evidence—Mr. Hanson, this is a full copy
and here is a full inventory (showing documents to counsel). We
offer in evidence, Your Honor, a printed document which contains
the description and inventory of the street railway property, and also
the ordinances.

The Court: Is there any objection?

113 Mr. Hanson: No objection.

The Court: It may be admitted.

[Document received in evidence and marked Plaintiff's Exhibit
A.]

Mr. Howe: We offer in evidence, Your Honor, a copy of the deed
from the company to the City.

The Court: Any objection?

Mr. Hanson: No objection.

The Court: It may be admitted.

[Deed received in evidence and marked Plaintiff's Exhibit B.]

Mr. Howe: We offer in evidence, Your Honor, two copies from
the personal property tax roll of King County relating to the Puget
Sound Traction, Light & Power Company property, for the years
1918 and 1919.

Mr. Hanson: No objection.

The Court: They may be admitted.

[Documents received in evidence and marked Plaintiff's Exhibit
C.]

Mr. Howe: Subject to this document being verified by Mr. Han-
son, we offer it in evidence. It is a statement from the Treasurer's
office making a demand on the company for the personal property
tax.

The Court: Any objection?

Mr. Hanson: No objection.

The Court: It may be admitted.

[Document received in evidence and Marked Plaintiff's Exhibit]

Mr. Howe: We offer in evidence, Your Honor, copy of notice from the State Board of Equalization to the County Assessor.

4 The Court: Any objection?

Mr. Hanson: No Objection.

The Court: It may be admitted.

[Document received in evidence and marked Plaintiff's Exhibit]

Mr. Howe: Now, Mr. Hanson, I would like to have the correspondence between the State Tax Commissioner and the County Assessor in reference to this assessment.

Mr. Hanson: You mean that letter that is pleaded in your pleadings?

Mr. Howe: All correspondence giving him instructions.

Mr. Hanson: That letter is all.

Mr. Howe: There is a letter from Mr. Jackson to the company which I have not been able to put my hand on. If you have a carbon copy I would like to put that in evidence. We now offer in evidence two letters, one dated March 15, 1919, and the other March 18, 1919, the first to the County Assessor and the second to the president of the company.

The Court: Are these joint exhibits?

Mr. Howe: Yes, Your Honor.

The Court: Any objection?

Mr. Hanson: No objection.

Mr. Howe: I would like to add to that exhibit, Your Honor, another letter of March 15th. (Showing letter to Mr. Hanson.) There will be two letters of March 15th, and they can all go in as one exhibit.

The Court: Three letters, rather than two?

Mr. Howe: Yes.

[Three letters received in evidence and marked Plaintiff's Exhibit F.]

115 Mr. Howe: I also offer this letter in evidence (showing letter to Mr. Hanson).

Mr. Hanson: I object to this one, Your Honor. This is a copy of a letter from the Tax Commissioner to the Attorney General, dated March 8, 1919.

Mr. Howe: I think it has a bearing on showing the action of the State Tax Commissioner, and we therefore offer it in evidence. You do not object for the reason that it is a carbon copy?

Mr. Hanson: No, but we object to its materiality.

Mr. Howe: I will let the court see the letter.

Mr. Hanson: Yes. (Court examines letter.)

The Court: How do you regard this as material, Mr. Howe?

Mr. Howe: Well, Your Honor will find that a statute provides for the company filing a report during the month of April; the statute also provides that the State Tax Commissioner shall consider that report in making an assessment, and our contention has always been that no assessment could be made prior to the receipt of that report. Your Honor will notice in the last paragraph of that letter the State Tax Commissioner states that it has always been customary, I think the language is, to make the assessment in the month of May. That is exactly what we contend. The law requires that no assessment can be made prior to the filing of the report.

The Court: It is your thought that this brings home to the State Tax Commissioner the fact of a precedent which had been followed?

Mr. Howe: Yes, Your Honor.

The Court: Do you object, as far as there is any question
116 raised, to the signature of Mr. Jackson?

Mr. Hanson: I object on the ground that it is incompetent, irrelevant and immaterial, if Your Honor please. The Commissioner either had power to levy this assessment or he had not, that is the gist of this case. Whether he asks counsel for any advice on the matter, or what the Commissioner may have done in the past would make no difference as to the legal right which is now being considered by this court. The advice of the Attorney General, if it had been furnished in reply to that request, would be of little assistance to this court in this case, because we have to argue our cases at the bar and not by introducing our opinions as evidence.

Mr. Howe: In view of that statement, Your Honor, I will withdraw that at the present time. Inasmuch as it is not contended that any instruction can change the law I will withhold that for the time being.

The Court: Very well.

Mr. Howe: We now offer in evidence, Your Honor, a protest which was filed with the State Tax Commissioner, of which he acknowledged receipt on the 25th day of April, 1919.

The Court: Any objection to that?

Mr. Hanson: No objection to that protest.

The Court: That will be received as Exhibit G in lieu of the other exhibit.

Mr. Howe: Yes.

The Court: Exhibit G will be admitted.

[Protest received in evidence and marked Plaintiff's Exhibit G.]

Mr. Howe: We rest, if the Court please.

JOHN M. THATCHER, produced as a witness on behalf of defendants, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Hanson:

Q. Will you state your name and your official position with the State of Washington?

A. John M. Thatcher, State Tax Commissioner.

Q. How long have you held that position?

A. Since the 14th of July, 1919.

Q. Who was your predecessor?

A. Clark R. Jackson.

Q. Have you charge of all the records and files of the office?

A. Yes.

Q. Have you with you the records of the office of the State Tax Commissioner showing the assessments upon the street railway operating properties of the State of Washington for the year 1919?

A. I have.

Q. Have you that record there showing the assessment on the property of the plaintiff in this case?

A. I think so.

Q. This is the roll that you have in your office? (Showing.)

A. That is the roll that is required to be kept in the State Tax Commissioner's office.

Q. Will you please read to the court and for the record—

Mr. Hanson: Perhaps before we have that read Mr. Howe would like to glance at the entry.

Mr. Howe: I desire, your Honor, at this time, to interpose an objection on the ground that under the law the State Tax Commissioner had no jurisdiction to make an assessment of street railway property, operating or other property. I am making that objection at the present time simply to preserve the record. The point will arise later on.

The Court: It will be overruled and the exhibit will be admitted, subject to the ruling on your motion at a later date.

Mr. Howe: Just get him to identify that. I may want to ask him some questions.

Mr. Evans: It is understood, Your Honor, that the City will make the same objection.

The Court: Will that be understood on the part of counsel, that the objection may be made for both the company and the City?

Mr. Hanson: It is satisfactory to me. I assume that the City and the company are lined up against us on this case, and that their objections are the same.

Mr. Evans: The interests are identical, so our objections will be the same.

The Court: The record may so show.

Mr. Howe: I would like to ask Mr. Thatcher a few preliminary questions.

The Court: Very well.

By Mr. Howe:

Q. Mr. Thatcher do you know when the entry in this book was made?

A. I do not.

Q. Is this the first entry for the year——

119 A. Yes.

Q. Any entry made in this book prior to the year 1919?

A. Not to my knowledge.

Q. And when you went down there was this the first book that you found in which any record of assessment was made?

Mr. Hanson: I object to that as incompetent, irrelevant and immaterial. The question now before the court is an assessment roll which the witness has identified as being the assessment roll and as being the assessment of this property for this year. What may have been done in the past is not material.

Mr. Howe: I will come around to that, Your Honor.

The Court: He is just inquiring at this time, Mr. Hanson, as to the history of the book itself. The inquiry is proper and pertinent, as I regard it. It may be answered for that limited purpose at the present time.

[Exception noted for Defendants.]

[Question repeated as follows:]

Q. And when you went down there was this the first book that you found in which any record of assessment was made?

A. Mr. Hanson: Isn't that the same objection I made, if Your Honor please?

The Court: I do not think Mr. Howe has reached the point that you have in mind. He is inquiring as to the history of this book, and as to that the court will permit him to answer, to establish the identity of the book.

(Exception noted for Defendants.)

120 A. This is the only roll I know of in the office that keeps any such records.

Mr. Howe: That is all, as preliminary questions, Your Honor.

By Mr. Hanson: Mr. Thatcher, will you please——

Mr. Howe: (interrupting): Just one minute—do you know whose handwriting that is?

A. I think it is the handwriting of Miss Schultz, my secretary.

Mr. Howe: Your secretary?

A. Yes. And she was Mr. Jackson's secretary also. She has been in the office six or seven years.

Q. Will you please read that entry into the record, beginning at the top and including all of the property?

A. You just want the Puget Sound Traction, Light & Power Company, don't you?

Q. Yes.

A. This roll is headed "1919. Electric railways. Name of Company". First is the Puget Sound Traction, Light & Power Company, King County. Assessment made March 15, 1919, and covers the street railway system.

The Court: Read that latter part again, made what?

A. "This assessment was made March 15, 1919, and covers the street railway system property and equipment in the City of Seattle, described in inventory filed in the office of the Comptroller of the City of Seattle December 30, 1918, bearing Comptroller's file number 72,055, excepting from said inventory, however, certain non-operating real estate, a list of which is on file in the office of the State Tax Commissioner."

Q. Give the amount?

A. The amount is \$12,000,000.

Q. And the heading?

A. Under the heading "Personal Property", totaling \$12,000,000.

Q. That covers that particular entry, doesn't it?

A. Yes, that is the only entry in King County. The other is Whatcom County.

The Court: That expression is "Excepting non-operating real property", did I understand you to say?

A. Excepting from said inventory, however, certain non-operating property——

The Court: Non-operating property?

A. "Non-operating real estate, a list of which is on file in the office of the State Tax Commissioner." Non-operating real estate.

Q. Have you at this time a list of the non-operating real estate that was referred to in that assessment roll?

A. Yes.

Q. That was on file in your office at the time, was it?

A. Yes.

Mr. Howe: I would like Mr. Thatcher to identify that, if he made it.

Q. Did you make it, Mr. Thatcher?

A. No. I didn't make it. I had nothing to do with this roll or this list. That was made prior to the time that I took office.

Mr. Hanson: All right, if you object I will wait for Mr. Jackson. That is all. You may cross examine, Mr. Howe.

122 Cross-examination.

By Mr. Howe:

Q. Mr. Thatcher this is your exhibit No. 1——

Mr. Hanson: I had him read from the record. If there is no objection, Mr. Howe, I do not want to take the official book itself out of the State Tax Commissioner's office.

The Court: I would suggest to counsel that for the needs of the court you make a transcript of this particular entry and file it in the record, so that I will have it before me.

Mr. Hanson: A transcript of this particular part?

The Court: Yes.

Mr. Hanson: I will have it made on one of these sheets.

The Court: Submit it to Mr. Howe and then file it, so I will have it in the files.

Mr. Hanson: That part of the sheet, then, will be copied.

Mr. Howe: I may want to get some more.

The Court: We will call it exhibit No. 1.

Mr. Hanson: Defendant's exhibit No. 1. offered and admitted.

The Court: Yes.

Q. Mr. Thatcher, I will ask you to look at Defendant's Exhibit No. 1, and under the heading of "Electric Railways", four pages prior to the page you have been just testifying about, state whether you find the names of other electric railways in this book?

Mr. Hanson: I do not see the materiality of this, if Your Honor please.

123 Mr. Howe: I want to lay the foundation by this witness for bringing out the fact as to whether those entries in that book were made on the 15th day of March.

The Court: Whether they were actually made at that time?

Mr. Howe: Yes sir.

The Court: I think he may answer that question, and I think you had better leave that legal question to a later time. You may have an exception.

A. This is the roll of all electric railways, and I find other electric railways entered into this. I cannot state when they were entered.

Q. But they precede——

A. They precede the Puget Sound Traction Light & Power Company.

Mr. Howe: That is all.

The Court: Let me see that.

Mr. Howe: The one he has just testified to is this one (showing), and the other one is four leaves later. (Showing the court.)

By Mr. Hanson:

Q. Does that roll cover the years 1918 and 1919?

A. No, 1919 only.

Q. 1919 alone.

A. Yes—is 1918 in there? It is not shown in the record.

Q. Yes it is.

The Court: What is this page?

Mr. Howe: This is the one he was first testifying about.

124 (Showing.)

The Court: How do you distinguish, Mr. Thatcher, between the notations found—it does not seem to be paged—under the head of “Electric Railways”, Subdivision 9, Puget Sound Traction, Light & Power Company, King County, \$16,686,000—

A. That is 1918.

The Court: Pardon me just a minute—as contrasted with this item under the head of “Electric Railways” under subdivision 1? I mean to say, what is there apparent in the roll itself which would tell ~~us~~ or some person a stranger to the record the distinction made between those two items?

A. I do not think a stranger would be able to tell. That 1918 assessment includes power plants and other property that is not included in the 1918 assessment.

The Court: There is nothing on the record itself to indicate?

A. No.

By Mr. Hanson:

Q. Glancing at the roll again, Mr. Thatcher, doesn't this include assessments for 1918 as well as 1919?

A. Yes.

Q. So that was inadvertent in your statement?

A. Each year is carried as a page. The 1918 is previous, just as the judge said, the Puget Sound shows an assessment of \$16,000,000 as against \$12,000,000 but there is property included in that \$16,000,000 that is not included in the \$12,000,000. It was not
125 included in the transaction, as I understand it. 1918 was the first year that the roll was required by law to be kept in the Tax Commissioner's office.

Mr. Hanson: The first point, then, if Your Honor please, is that 1918 and 1919 are both included in this assessment book in appropriate places, the witness having first testified that it only included 1919.

Mr. Howe: Mr. Hanson, I want to get that from the witness. I think Mr. Jackson can best explain that.

By Mr. Howe:

Q. But, Mr. Thatcher, you do not mean that this third column is 1919—

A. That is 1918, they are all 1918.

By Mr. Hanson:

Q. Those are 1918 across there?

A. The year 1918 was closed, and we start with the roll again for 1919.

By Mr. Howe:

Q. Then when you come down to the Puget Sound Electric you have got the——

A. The real property and personal property in total, the same as in 1918, but there are properties included in here that were not included in there. We close each year. We closed the book for that year.

The Court: So you cannot tell whether the properties are identical?

A. No I could not.

The Court: Or substantially identical?

A. Well, of course I could guess at what was left out, because I know what was left out in the transaction.

126 The Court: There is nothing in the record itself?

A. Nothing on the record to show.

By Mr. Hanson:

Q. But you know of your own knowledge what was left out, do you?

A. Yes.

Q. What was left out?

A. The power plants were left out.

Q. Had they been included in 1918 as part of the property of the street railway company?

A. I think so.

Q. Anything else along that line?

A. Well, of course there is certain real estate that was left out that was included—that is, operating real estate.

By Mr. Howe:

Q. You do not mean, Mr. Thatcher, that the operating real estate which was assessed in 1918 and which was sold to the City was left out in 1919?

A. Oh, no. I don't know just what your transaction includes. I don't know what the deed includes. I have never read the deed.

Q. I mean that the assessment says that it covers all of the operating property of the street railway mentioned in that inventory filed in the Auditor's office, except certain non-operating real estate?

A. Yes.

Mr. Howe: That is all.

Mr. Hanson: That is all, Mr. Thatcher.

(Witness excused.)

127 CLARK R. JACKSON, produced as a witness on behalf of defendants, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Hanson:

Q. State your name?

A. Clark R. Jackson.

Q. What position did you hold in the Tax Commissioner's office in Olympia, or what positions did you hold, and when?

A. I held the office of member of the State Board of Tax Commissioners from May 1, 1913, until June 1917, and the office of State Tax Commissioner from June, 1917, until July 14, I think it was, 1919.

Q. And then you were succeeded by Mr. Thatcher?

A. Yes sir.

Q. The State Board of Tax Commissioners consisted of three members?

A. Yes sir.

Q. And in 1917, by the law of 1917, it was consolidated into one individual?

A. Yes.

Q. And you became the Commissioner?

A. Yes.

Q. So that you had a total length of service in that office of how many years?

A. Six.

Q. About six years?

A. A little over six years.

128 Q. During the time that you were Commissioners, and during the time that you were a member of the Commission, did you assess the railroad properties and the street railway properties throughout the State?

Mr. Howe: One Minute; for the purpose of saving the record we object to that as incompetent, irrelevant and immaterial.

The Court: I cannot tell as yet as to the materiality of it. The answer may stand.

(Exception noted for plaintiff.)

A. As a member of the board I assisted in the assessment up to the time I became Tax Commissioner, and then I made the assessments as Tax Commissioner thereafter.

Q. I call your attention to Defendant's exhibit No. 1. On what date did you as Tax Commissioner make the levy and assessments upon the operating property of the street railway company for the year 1919?

A. On March 15th.

Mr. Hanson: I will ask to have this document marked for identification.

The Court: You were asking, Colonel Hanson, as to the actual fact, rather than the legal conclusion.

Mr. Hanson: Yes, the actual fact; he did it on a certain date.

The Court: His answer is March 15th.

Mr. Hanson: March 15th.

(Statement marked for identification as Defendant's Exhibit No. 2.)

Q. I hand you Defendant's Exhibit No. 2 for identification, and I will ask you what that statement is, if you know?

129 A. That is a list of property, furnished to our office by Mr. Hull, at my request, a list purporting to contain all of the real estate belonging to the Puget Sound Traction, Light & Power Company which had theretofore been assessed by Mr. Hull, and was included in the inventory on file in the Comptroller's office. That is what the list is supposed to contain, is real estate which we had theretofore considered as non-operating real estate, and which real estate was being sold to the City of Seattle, together with the street railway system. It speaks for itself here; it is certain shorelands, park property, and one thing and another.

The Court: I did not understand the first part of that answer. Will you please read it.

(Answer repeated to the Court.)

A. (Continuing:) The list also contains the assessed valuations of 1918 on this property.

Q. Did you have that list in hand at the time you made the assessment in 1919?

A. I did.

Q. Did you take that list and the items thereon shown into consideration?

A. I did.

Q. In fixing your value?

A. I did.

Mr. Hanson: I offer that in evidence.

Mr. Howe: We object at the present time, Your Honor. I would like to ask the witness some preliminary questions.

The Court: Very well.

130 Q. Will you please read, now, at the bottom of the second page?

Mr. Howe: Of course the instrument speaks for itself.

Mr. Hanson: I want him to explain that, Mr. Howe.

Mr. Howe: It is all subject to objection.

Mr. Hanson: Yes.

Q. What does that total refer to?

A. The total there refers to the total assessed valuation of the real property. The other total refers to the assessed valuation of the improvements upon the real estate covered in this list.

Q. So that there would be \$53,860 of real estate, and \$6,290 of improvements?

A. Yes, assessed valuations.

Q. Which was listed here as non-operating property?

A. Yes.

Q. That is the assessed value of it?

A. Yes.

By Mr. Howe:

Q. Mr. Jackson, was this instrument transmitted to you by Mr. Hull by mail?

A. Yes.

Q. Have you the letter in which it was enclosed?

A. I have searched for the letter of inclosure, and I do not find it in the files. I have, however, serious doubt as to whether it was transmitted with a letter.

Q. Do you remember the date on which you received this?

A. No. I do not. I remember—in fact, in getting it I telephoned Mr. Hull. I have no letter asking for it. It was done in a conversation over the telephone, by telephone conversation, and I think that he telephoned me the day that he sent it down, and I think it was just inclosed in an envelope.

Q. Now, approximately what is the closest date that you can remember?

A. Well, I imagine that that letter arrived either on the 15th or the day before. I know that it was pretty close, anyway.

Q. Now, Defendant's Exhibit No. 1, which you have in your hand, in whose handwriting are those entries?

A. That handwriting is made—those entries were made by Miss Schultz, a clerk in the office at that time, at my direction. on the 15th day of March, 1919?

on the 15th day of March.

A. If those entries were not made on the 15th day of March they were made within a very few days thereafter. That is, it was just a matter of getting time to do it.

Q. I want you to be careful with this—I mean I want you to be accurate. As a matter of fact, were these entries in this book in existence on the 15th day of March 1919?

A. Mr. Howe, I cannot swear that that first entry there was made on the 15th day of March.

Q. Now, I turn to the entries which purport to be the assessments for the year 1918. Where those entries in that book prior to the year 1919?

A. They were not.

Q. So that all of these entries which purport to be assessments for 1918 were not in that book until 1919?

A. Those entries, to the best of my recollection, were made after this question came up, that is, these entries were in prior to March 15th, but they were put in here after the

question came up in 1919. We found out our deficiency in not having this particular roll, and made those entries.

The Court: Which were those?

A. The 1918 entries. Pardon me, Judge, I can explain that. We had those, but not in that shape. We had them for 1918 written up and signed in a loose leaf book. We use to make them as part of the minutes, and verify them. When the office of the State Board of Tax Commissioners changed to the State Tax Commissioner it did away with the meetings of the board, and it did away with the minutes. The list was prepared in the same way, but it did not appear to be an official record. When this question came up in 1919 it appeared that there was something missing there, that is, a perfect roll, and this book was obtained in 1919, and the 1918 entries were all copied in it. That was done, however, prior to the 15th of March. I remember that clearly, because when the 15th of March came we had it all ready for the other one.

Q. Now then, Mr. Jackson, was any other street railway property in the State assessed in the year 1919, on or prior to the 15th day of March?

A. No.

Mr. Hanson: Just a minute; I object to that on the ground that it is immaterial.

Mr. Howe: I think it is very important. Your Honor.

The Court: Are you contending that his successor would
133 be bound by custom, whether the law obligated him to do this or not?

Mr. Howe: I am contending this, that instead of carrying out a custom, this one company was singled out, this one piece of property was singled out to be assessed on a date prior to any other property.

The Court: The Court will not decide at this time as to whether custom would have any binding force on the actions of a public officer in performing this sort of service. I will permit it to go in subject to your motion to strike it out.

Q. So that the only property, the only street railway property appearing on this roll, which was for the year 1919, which you claim was assessed, was this property conveyed to the city?

A. How was that?

The Court: Read the question.

(Question repeated.)

A. Your question is not framed right, Mr. Howe.

Q. Well, I will withdraw that question. I see that I did not fix the date. What I wanted to get at was this; the only street railway property which you claim was assessed on or prior to the 15th of March, 1919, is the property that was conveyed to the City.

A. Yes.

Mr. Hanson: The Court has ruled on that, so it is subject to my motion.

Q. Now, Mr. Jackson, referring to the exhibit that Mr. Hanson handed you, and which he is going to offer in evidence as
134 Defendant's exhibit No. 2, I understand you to say that that represents property which you had never considered as operating real estate?

A. It represents property which prior to 1919 we had never carried in our assessment as operating property.

Q. You had never exercised jurisdiction over that?

A. Never at all.

Q. And, therefore, you wanted that property to remain in that condition?

A. Yes. Well, I didn't—my thought was that I did not have any right to assess that property.

Q. That is exactly what I mean.

The Court: Why not? It may be apparent to counsel, who have been studying the case, but it is not to me.

A. Because under the law, the State Tax Commission assessed only operating property of a street railway company, and if this property was non-operating or commercial property that is not necessary to or used in the operation of the road, I doubted my right to assess it, and this was covered by the inventory on file in the Comptroller's office, and it was my intention to assess the property contained in the inventory. Therefore, I desired to exclude this.

Q. But you did undertake to assess, and you intended to assess all of the real estate included in the inventory that you had previously assessed as operating property?

A. Yes.

Q. And all of that you assessed, all of the operating property, real and personal in a lump?

135 A. That was—

Q. That is what you did?

A. Yes, that is what I did.

Q. Did you, Mr. Jackson, assess the operating property of any street railway in this State, other than this property, during the month of March, 1919?

Mr. Hanson: The same objection, if Your Honor please.

The Court: The same ruling.

A. Now Mr. Howe, as you ask that question I would say no, except that this is a fact, that we commenced—lots of reports from different companies came in, and we went to work on them, and the assessment is practically completed for all purposes except notification. I cannot tell when that is—it is often done in March, subject, however—after the report has been in we have the matter completed, and then we are through. I do not know when the time of the assessment might be said to be completed, whether it

is when the assessment is completed or when the letter of notification goes out.

Q. But there is nothing on your roll to show?

A. No.

Q. That any street railway property other than the property involved was assessed during the month of March, 1919?

A. No.

Mr. Hanson: I offer this Defendant's Exhibit No. 2 for identification in evidence.

Mr. Howe: We simply object to it as immaterial.

The Court: It will be received. Exception allowed.

(Document received in evidence and marked Defendant's Exhibit No. 2.)

136 By Mr. Hanson:

Q. Now, Mr. Jackson, the inventory which has been offered in evidence here as Plaintiff's exhibit A, as I recall it, includes the operating property of the company sold to the City, and also some real and personal property which was not listed as operating property?

A. Real estate——

Q. Just real estate; when you made the assessment you excluded the non-operating property?

A. Real estate.

Q. Yes. I call your attention to Defendants' Exhibit No. 1, wherein you placed a value of twelve million dollars upon the operating property that is involved in this case, and also the entry upon this assessment roll for the year 1918, wherein the Tax Commissioner placed a valuation of \$16,686,000 upon the property of the Puget Sound Traction, Light & Power Company in King County. What was the reason for the discrepancy in these two items?

A. It has been the practice in the office of the State Tax Commission and the State Tax Commissioner—it was the practice before I took office and ever since, in fact, the practice has grown to a larger extent since I have been there, of assessing all of the property, operating property of the Puget Sound Traction, Light & Power Company in their various lines of industry in one total. That is to say, the power plants and transmission lines outside of the city, the light and power distribution system in the city, the street railway property in the city, and the steam heating plant in one assessment.

137 Mr. Howe: Just a minute; I just want to state that this is all subject to our objection, Your Honor.

The Court: I do not quite understand the nature of the objection Mr. Howe. He is just defining a practice in the office, I rather assume. You would not be bound by any unlawful practice, but this is historical to the Court and illustrative of conditions which I might later hold bad legally or good legally.

Mr. Howe: Yes. I do not care to argue it *it* get your Honor to do more than note the objection.

The Court: Yes, it is subject to your objection.

Q. Go ahead, Mr. Jackson.

A. That property for the year 1918 was valued at the amount shown here of \$16,686,000. In making the 1919 assessment everything was eliminated, that is, all these side lines were eliminated, and the assessment only covered the street railway operating property, as shown in the inventory referred to.

Q. Just help us here and tell us specifically what general units were included in the 1918 assessment under one charge?

A. In King County?

Q. Yes, in King County. First there was——

A. First there was the Snoqualmie Power plant; second the transmission lines running from Snoqualmie power plant——

The Court: On that point; are you attempting to recite something that is shown by the data and records of the office down there?

138 A. Yes, the records would show it.

The Court: I should think that might be objectionable, because the records themselves would be certainly the best evidence of the items which go to make up——

Mr. Hanson: I was not going into the subdivision totals at all of those items, but merely to show Your Honor that the Snoqualmie plant, that the distributing plant, and that the steam heating plant in the City of Seattle, as well as the street railway system, had been all lumped together and called street railway operating property.

The Court: It goes to the point of showing the practice of the office, rather than to call attention to any specific details?

Mr. Hanson: Yes, that was all, merely to show Your Honor that other items had been included.

The Court: Very well.

Q. Will you please finish that last?

A. Transmission line outside of the City of Seattle, power and distribution system in the City of Seattle, the steam heating plant in the City of Seattle, and the street car system in the City of Seattle.

The Court: Those were all considered as operating——

A. (Interrupting.) I don't know whether it would be proper to tell the reason why that combination was made——

Q. Please give that reason?

A. I can explain it.

139 Q. It is merely historical, and for the purpose of explaining to the court how the practice developed.

A. An agreement on this matter was made in 1914 between the Assessor of King County, the tax agent of the Puget Sound Traction, Light & Power Company, and the State Board of Tax Commissioners, that the property should be assessed in this way.

It was questionable from a legal standpoint, but the Assessor desired it in order to eliminate a large part of his work in carrying all these distinctions on the rolls. The tax agent for the traction company desired it for the same purpose, that it saved much work in his office, and we could see no objection to it, except possibly an objection from a legal standpoint. Under what you might call a gentlemen's agreement between the two interested parties we agreed that the assessment might be made in this manner, and sanctioned it.

Q. I call your attention to plaintiff's exhibit F, and particularly to a letter to Mr. Frank W. Hull, County Assessor, dated March 15, 1919. Did you write that letter to Mr. Hull?

A. Yes.

Q. Did that letter cover the situation?

A. The letter is inconsistent in this—of course it was in a conversation afterwards that I probably can testify to, but the last paragraph of the letter is inconsistent in the wording.

Q. Well, wherein does this inconsistency lie?

A. The paragraph commences: "This assessment covers only the street railway operating property, and you will proceed to value and assess all of the property of the Puget Sound Traction, 140 Light & Power Company heretofore valued and assessed by this office, with the exception of property described in a certain inventory filed in the office of the Comptroller on the 30th day of December, 1918, bearing Comptroller's file No. 72.055."

The intention of this letter, as appears by the first sentence, is to direct Mr. Hull to assess all of the property of this company, all the property of this company with the exception of the street railway operating property, and then later on I threw in this reference to this inventory here and omitted to except—well, the real estate included in that list which has been admitted in evidence.

Q. Defendants' Exhibit No. 2?

A. It was merely oversight on my part in writing the letter that that property was omitted, reference to the property was omitted from this letter. In other words, this letter would appear to indicate that he was to assess all the property contained in the inventory on file now in the Comptroller's office, when, as a matter of fact, we had—he was thoroughly conversant with the situation and knew different.

Q. In other words, you were notifying him, were you, that you were not going to assess the other properties, like the light, heat and power plants?

A. Yes, that was the purpose of the letter, to notify him that he was to assess the light, heat and power, the power plants and the steam heating plant.

Q. Had you had a conversation both before and after the 15th of March with Mr. Hull on this item?

141 A. Yes.

Q. And this letter was merely written—

A. This letter was merely written for the matter of a record, and as a matter of record I was not full enough.

Q. If, as a matter of fact, the actual manual entry of the entry

in this book of the assessment of March 15th was not made on the 15th day of March, within how many days was it made after the 15th day of March, 1919?

A. I cannot tell at this time, but the direction to the stenographer was certainly given at the time the assessment was made, the 15th of March. It may have been that she got around to write this in—it was dictated to her, I will say, on the 15th of March, the matter to go in the book.

Q. You dictated that matter?

A. I dictated what goes into the book to her. It may have been the day after, or the next day, or a week after that she put it in the book. I cannot swear to that.

Q. Was it before—

A. I am positive that matter was all closed up and this assessment was dictated to her on the 15th day of March.

Q. It was done in the usual course of business, the entry made?

A. Yes.

Q. And before the 31st of March?

A. Yes.

Mr. Hanson: That is all.

Cross-examination.

By Mr. Howe:

42 Q. Mr. Jackson, is that stenographer still employed?

A. Yes.

Q. In that office?

A. Yes.

Q. Now, are you very sure, Mr. Jackson—it is only your memory I am testing, I accept your word absolutely, it is only your memory—are you absolutely sure that on the 15th day of March, 1919 you did dictate that to a stenographer?

A. I have nothing to fix it in my mind, Mr. Howe, but I would say that it was done on the 15th day of March.

Q. Why?

A. Well, because the other letters were dictated on that date and transmitted, and my best recollection is that the whole matter was closed up in one transaction. That is, that it was all done at that time. That is formally entered in the record, so in all probability it was dictated at the same time the letters were dictated.

Q. Now, referring to this letter that Mr. Hanson asked you about, and where you say there is a mistake; wouldn't that suggest to your mind that when you were writing to Mr. Hull you had not yet received that list of real estate that was to be left out?

A. Mr. Howe, of course if I had a letter of transmittal I would know just when that letter came, but I haven't. What I recall is this, that I had considerable difficulty in getting that list. I think I had two or three telephone conversations with Mr. Hull, asking him to hurry it down. Before the list came I knew what it contained,

143 and knew the total. He had given me the total, and I was conversant with what the list would amount to, and my best recollection is that that list came at the time the assessment was made.

The Court: You refer to this Defendant's Exhibit No. 2, don't you?

A. Yes. Furthermore, there does not appear to be our regular stamp on it in the office. I was noticing that a minute ago. All mail that comes in our office is stamped, unless the mail is taken in a hurry by somebody immediately upon its coming in and doesn't go through the regular course of the office. And that is another reason why I think that list came on the last day, is because it is not stamped with the office stamp.

Q. When you say you think you dictated it to the stenographer the assessment, do you mean to say you think that on the 15th day of March, 1919, you dictated to the stenographer exactly what appears on the page of the book?

A. That is my recollection, yes sir, Mr. Howe.

Q. And in this assessment was included all of the real estate sold to the City, with the exception of the real estate described in Defendants' Exhibit No. 2?

A. That was my intention.

Mr. Howe: That is all.

Mr. Hanson: That is all Mr. Jackson, I will call Mr. Hull on one point.

Mr. Evans: There are one or two questions I would like to ask Mr. Jackson in connection with this entire matter.

By Mr. Evans:

144 Q. On March 8th you wrote a letter asking Mr. Thompson, the Attorney General, to give you an opinion with regard to whether or not an assessment should be levied on this property in suit. Do you recall when you got an answer to that letter?

Mr. Hanson: I object as incompetent, irrelevant and immaterial.

The Court: He may answer that question:

(Exception noted for Defendants.)

A. I cannot tell the exact date. There was never any written answer to the letter. Mr. Thompson came down to the office, I think, very soon after that, either the next day, or probably the 9th or 10th, and we had a conversation in regard to it. I cannot recall whether we decided at that time or whether we had a subsequent conversation, perhaps the next day.

Q. I was under the impression that you showed me a letter that Mr. Thompson had written, but I may be mistaken about that. You think he did not write a letter?

A. I am quite positive there never was an answer. I asked Mr. Thompson a couple of days ago when he was up here, and he said his impression was that there was never any answer. At least it is not in our files.

Q. As I understood your testimony, Mr. Jackson, in 1918 you had loose leaf system of keeping the record of assessments upon operating properties?

A. Yes, we had what we called findings at that time. They were gotten out in regular form and written up, but there was no book form. They were put in our minutes as an assessment roll. It had been the practice of the former commission to do that, and we continued to do it.

Q. In 1919 you changed that scheme and made a permanent record?

A. In 1919 there was no reason for minutes. I was the Commissioner, and we didn't have meetings, I didn't have meetings. It didn't occur to me during the year 1919—I had made during the year 1919——

Mr. Hanson: You mean 1918.

A. Pardon me; 1918. I had made a list of the properties, together with the amounts, and those had been kept as part of the office records, and in 1919, with this question coming up, that is, the question of an assessment which might possibly be litigated, the matter was called to my attention more forcibly, and I sought to provide myself with a roll.

Q. A permanent roll?

A. And after providing myself with a roll I entered the last year's assessment in as taken off from our minutes.

Q. That was done in 1919?

A. That was done in 1919.

Q. And this is the roll that you have produced here in Court, Defendants' Exhibit No. 1?

A. Yes.

Q. As I understood your testimony, as a matter of fact you made no assessments upon operating property of any other company except the property in suit during the month of March, 1919?

A. No.

Q. And any assessment that was made upon other operating property was made, of course, subsequent to the 31st of March, 1919?

A. It was made during the months of April and May.

146 Q. And of course it was postponed, I assume, for the purpose of permitting the company affected to file any protest or make any showing before you, yourself, as commissioner.

Mr. Hanson: I object to that as incompetent, irrelevant and immaterial.

Mr. Evans: I think the statute, Your Honor, establishes the practice in these matters.

The Court: I will permit him to answer.
(Exception noted for defendants.)

A. Ask me that again.

Q. I say, the reason you did not make the assessment during March was because you wanted to accord the companies an opportunity to be heard, to file any protest that the statute provides for?

A. I would not state that as the reason.

Q. Now, you know that under the state law the company—

A. I would say this, Mr. Evans, in answer to your question, that this was the first time that a question had ever come up where there was any incentive, or, I mean, any idea of making an assessment earlier than the first of March, or, that is, earlier than the 31st of May.

Q. Earlier than the 31st of May, and the 31st of May was usually the date when you made the—

A. As long as I have been on the commission there has never been any question involved in an assessment which would speed us up, that is, where we wanted to make an assessment out of turn.

Q. So you made them, and the practice was to make them
147 about the 31st of May?

A. To make them during the months of April and May, and give out the figures on the 31st of May, for all companies at one time. They were made during the months of April and May.

The Court: Doesn't the statute itself fix the time when the assessment is to be made?

Mr. Hanson: Yes, if Your Honor please. If counsel had called the Court's attention to that law—

Mr. Evans: We will do that in the argument.

Mr. Hanson: It says from the 1st of March to the 1st of June.

Mr. Howe: That will be a point, Your Honor, that this testimony has quite a bearing on.

The Court: The reason I raised the question was merely because of the way Mr. Jackson answered. He said he assessed them anywhere from March 15th to May 31st, and I was wondering what he meant by that, whether he referred to the labor in the office, or was suggesting to the Court that those assessments became valid and binding as of a certain date.

A. If Your Honor please, I can explain that in this way; that the assessments must be made by the first of June, and it would be—supposing the assessments were made during the months of April and May, it would be a poor practice in the office to give out the amounts of the assessments before the last day; you would be just running into grief, because those companies would figure that you
148 could correct your error, and they would come to you if they thought the assessment was excessive and make it very hard for you, and it has always been the practice to wait for the last day to come and give out all the assessments, and then the companies, if they have any kick, can go to the Board of Equalization and not come back to the Tax Commissioner for redress. That is only a matter of practice.

The Court: You did not intend to leave with the Court any impression that you ever fixed any due date other than that which

was provided by the law itself, although you may have done it thirty days later, is that correct?

A. That is right, yes.

By Mr. Hanson:

Q. All assessments are fixed on the first of March?

Mr. Howe: I object to that.

Mr. Hanson: I will ask it the other way; I will ask him if he made his values as of the first of March?

Mr. Evans: I think if we get the practice of the commission and the practice of the Commissioner out it might show the construction they put upon the statute and give us the practice, and we will argue the statute when we came to it.

The Court: Very well. Propound another question.

By Mr. Evans:

Q. Mr. Jackson, will you tell the court how many entries for the year 1919 this record shows?

A. I don't know.

Q. What would you entitle this record? Is it your permanent assessment roll?

149 A. The state printer was supposed to make a leather piece to go on the front of it to show what it was, but when I left the office I think the order was in, but it does not appear to be on there.

Q. Will you tell us how many entries precede the assessment upon the property in suit, for the year 1919?

A. This was the first entry.

Q. What is that entry?

A. It is the assessment of the Puget Sound Traction, Light & Power Company in King County.

Q. Is there no further entry pertaining to that?

A. Yes, the next entry is the assessment of the same company in Whatcom County.

Q. And then what is your next entry.

A. The assessment of the Grays Harbor Railway & Light Company.

Q. And all the other assessments shown in this book to other companies were for years other than 1919?

A. No, the steam roads and the telegraph lines precede the electric in 1919.

Q. How many entries on steam roads and other utilities have you in the record for 1919?

A. There are twenty-five entries on steam roads, and two entries on telegraph lines.

Q. They all precede the entry of the property in suit?

A. Yes.

Q. In this record?

A. Yes.

Q. When were they made, Mr. Jackson?

A. They were made in the spaces—these pages were left—
150 that is the regular order, steam roads, telegraphs and electric. Those pages were left and this entry was made.

Q. As a matter of fact, weren't they made before the one on the company in suit?

A. They were not.

(Whereupon the Court takes a recess until 1.30 o'clock P. M.)

151

Afternoon Session, June 7, 1920.

Mr. Hanson: I have here Exhibit No. 1, which has not been marked yet.

(Document received in evidence and marked Defendant's Exhibit No. 1.)

Direct examination.

By Mr. Hanson:

Q. Mr. Jackson, will you please explain to the court what this document is? (Showing.)

A. This is the annual report of the Puget Sound Traction, Light & Power Company to the State Board of Tax Commissioners, or to the State Tax Commissioner, rather, for the year ending December 31, 1918.

Q. Was December 31st, the end of the calendar year, I mean the end of the year for the reports in each instance?

A. The 31st of December is the end of the year provided for making these reports by the statute.

The Court: The statute fixes that time?

A. Yes.

Q. What was the date as of which the value of the property was fixed?

A. March 1st.

Q. That is by statute too, is it?

A. Yes.

Mr. Howe: We object to that—oh, you say the date as of which the value is fixed?

Mr. Hanson: Yes. The value is fixed as of March 1st.

Mr. Howe: I will withdraw that.

A. These dates are both fixed by statute.

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Q. Covering up to December 31st *preceding*?

A. Yes.

Q. In relation to that report, was that similar in form to that which had been furnished for each of the preceding years?

A. How is that?

Q. Was that 1918 report similar in form to that furnished by the company in each of the preceding years when you had been

either Tax Commissioner or a member of the State Board of Tax Commissioners?

A. This is the same form of report that has been furnished by the company for at least the three preceding years. We made a slight change eliminating lots of information asked for about 1915, when this form was printed.

Q. Did the 1918 report or any of the preceding reports separately group the operating property of the street railway system in the city of Seattle, or, on the other hand did it group the operating property of the street railway company in the City of Seattle with the property of the power plant at Snoqualmie Falls, and the steam heating plant here in Seattle, and the distributing system in King County, or the distributing system of light and power in the city?

Mr. Howe: We object to that as immaterial.

Mr. Hanson: I will show the materiality, if the court please.

Mr. Howe: I just want to save the record.

The Court: What is the materiality?

Mr. Hanson: Simply to show, as a matter of fact, that the former report which they had furnished heretofore and which they
153 said was the only kind of a report they could furnish, was of such a character that its value was very small in assisting the Commissioner in arriving at the specific value of this property as a unit.

The Court: Does the report itself require any such Elucidation, or does it express on its face the matter to which you refer? If it does I think that would be the best evidence. Possibly it would be objectionable for that reason.

Q. Mr. Jackson, will you answer the Court's question; does this report show on its face that they group these elements, or treat each unit separately?

A. The report does not show on its face.

Q. Then explain.

A. I might state in explanation that there are several elements, or several tables that go to make up this report. In speaking of the report the most important part of the report is what is known as the income and disposition account of the company, the revenues and disposition of the revenues. That is the most material part of the report as far as the taxing authority who is examining the report is concerned. That part of the report covers all of the operations of this company, that is to say, the street railway, the light and power, steam heat, etc., in one total. It is not segregated as to any particular line of operation of the company, it covers all the operations in one total. I am speaking now of the income and disposition account. There are tables in this report, for instance, asking for the mileage of the street railway, and there is a table
154 in here concerning the financial statement, showing the outstanding bonds and outstanding stock, etc. That would cover the whole company, the company as a unit. And there are other tables in here which have nothing to do with the assessment

of the property, but have to do with the distribution of the taxes, reports as to the amount of property in certain school districts and road districts, etc.

Q. So that the report as a whole would be useful in valuing all of the elements of the property, but not in valuing the one element of the street railway operating system merely as such.

A. I would say that the report as made in prior years is of very little consequence in determining the value of the street railway operating property separately.

Mr. Hanson: Now, for the purpose of the record, I think it is the position of counsel as stated this morning—the pleadings also show it—that they are making no contention upon the valuation placed upon the property in this case, but merely upon the right of the Commissioner to levy any assessment at all, and such other objection as Mr. Howe stated, but as to this one point, they are not raising that point. Am I correct?

Mr. Howe: We are not raising any point——

Mr. Hanson: As to the valuation.

Mr. Howe: —as to the valuation, but we are taking the position that the property which is on the tax roll and on which we
155 are assessed includes the value of all of the street railway operating property, real and personal.

Mr. Hanson: There is no quarrel about that. The statute itself says that it shall be assessed as personal property.

Mr. Howe: I just want to make that clear.

Q. Mr. Jackson, why did you list the operating property, both real and personal, of the street railway company in the city of Seattle for the tax of 1919 as personal property?

A. I did it in pursuance to the provisions of the statute.

Mr. Hanson: I think that is all.

Recross-examination.

By Mr. Howe:

Q. Mr. Jackson, this report which you have in your hand is for the year ending December 31st, 1918?

A. Yes sir.

Q. And those forms that the company filled out were prescribed by the Tax Commission?

A. They are prescribed by statute and prepared by the Tax Commission.

Q. And the company in turning this in filled out the form, did what the Tax Commission and the statute, in your judgment, required? I mean this was not a voluntary act on the part of the company, this was turned in——

A. That report is turned in as provided by the statute. I am not prepared to say in answer to your question that that report has

156 heretofore been made in exactly the form that the Tax Commission would like to have it. However we have never offered any serious objection to the manner in which your company has made that report.

Mr. Howe: That is all.

The Court: As I understand your answer, possibly the Tax Commissioner might not regard it as entirely satisfactory, but—

A. (Interrupting.) In prior years, that is, this report and in years gone by we would like to have had a segregation of the different operations of the company, but the company complained that it was impossible for them to make the segregations, and they asked us—they made this as the best way they could, that is, lumped it. We would like to have had it in the separate operations, the light and power, and the steam heat, and the Bellingham system, income and disposition account separate, but we never were able to get it.

By Mr. Howe:

Q. But Mr. Jackson, the forms you prescribed?

A. The forms we prescribed.

By Mr. Hanson:

Q. Just follow that through, Mr. Jackson, the 1918 report now covers in a consolidated form what elements?

A. All of the earnings of the company and all of the expenses; all the revenues and all of the disposition of the revenues of the company.

Q. But you spoke this morning about the elements—I think you used that term—in King County as comprising the operating company, of the street railway property in Seattle, and the light and power plant at Snoqualmie, the distributing system in King County and in the city, and the steam heating plant in the city; now, 157 what other similar elements are included in this general report? I mean the report of 1918.

A. The operations of this company in the city of Bellingham which comprises the street railway system, the light and power, and the gas plant in the city of Bellingham. That is also included in that report. They also have some minor operations in the City of Everett. They have some contracts in the City of Everett for light and power, and that is also included in that report.

Q. Is anything in Pierce County included in that report?

A. No, I think not. If there is it is inconsequential.

Q. Anything in Snohomish or Whatcom counties?

A. Yes.

Q. And they have included the gas plant—

A. Well, that report—pardon me—that report in the disposition account will show the expenses of upkeep, etc., of the Lake Tapps and Electron plants.

Q. So that is in there to some extent.

A. Yes, to some extent.

Q. So that your income and disposition account, then, is consolidated?

A. It is a consolidated report of all the operations of the company.

Q. Had you ever asked for a segregated report?

A. We have. I would not say we demanded it, but we have asked if it was not possible to make such a segregated report, and we were assured by the accountant of the Puget Sound Traction, Light & Power Company that it would be an almost impossible task to segregate these items as of December 31st, that their books are not
158 kept in that way, their year does not end December 31st, and they preferred to make their report this way, and asked us to accept it that way, and we accepted it.

Q. That has reference to the income?

A. The income and disposition account.

By Mr. Hanson:

Q. Have you been personally familiar with the unit known as the street railway operating property of the company that was assessed by you in 1919?

A. I think I am, yes, or was at the time.

Q. For how long a time prior to that time had you been personally familiar with the property and its value?

A. I had been identified with assessing that property for six years prior.

Q. Had you ever inspected the property?

A. I have inspected the property, yes.

Mr. Hanson: That is all.

Mr. Howe: That is all.

(Witness excused.)

159 FRANK W. HULL, produced as a witness on behalf of defendants, being first duly sworn, testifies as follows:

Direct examination.

By Mr. Hanson:

Q. Your name is Frank W. Hull?

A. Frank W. Hull.

Q. What is your official business with King County?

A. Assessor of King County.

Q. How long have you been assessor of King County.

A. Since January, 1919.

Q. Prior to that time what was your position?

A. Chief deputy in the office of the County Assessor.

Q. How long have you been in the employ of the County in the Assessor's Office?

A. Since 1908.

Q. Continuously?

A. Continuously, with the exception of the time I was out in the army.

Q. I hand you herewith Defendant's exhibit 2. Please state to the Court what that is?

A. This is a list of property that was included in the ordinance of the City of Seattle in taking over the street railway lines. Now, I could explain to the Court how it happens that that is not on the official record.

Q. That is what I want.

A. Mr. Jackson, Mr. Clark Jackson, who was then State Tax Commissioner at that time, back in February, 1919, discussed with me the assessment of the street car lines——

160 Q. You mean the operating property?

A. The street railway operating property. He stated he was going to make the assessment and that I would proceed to assess the property that had heretofore been class-fied as operating property but had not been taken over by the City, so in compiling this list of real estate and improvements on the real estate it was necessary to take the ordinance of the City of Seattle and go through the records and check them against the Assessor's abstracts and stamp the real estate "City of Seattle. Exempt." He asked me for a list of this property at that time, and I did not furnish him a list—I gave him over the telephone, over the long distance telephone about what the amount would be. He was in my office some time the fore part of March, I cannot say just the exact date, but it was the early part of March, and I had just completed this list. Mr. Jackson was in a hurry to get to Tacoma, and instead of writing him a letter I handed him the list which the stenographer had just completed on the machine. That is why there was no letter attached to it. It was some few days after that that I received a letter from Mr. Jackson officially notifying me to proceed and assess the balance of the property.

Q. I hand you plaintiff's exhibit F, and particularly the letter addressed to you on March 15, 1919.

A. Yes, this is the letter that I received.

Q. After you had given Mr. Jackson the list of the property?

A. There is some property in that list that was not, that had never been assessed as operating property, it was assessed, as we classify it in our office, as commercial property. It never had been included in the operating property assessment. It was assessed locally. There was also some in the list that had been assessed.

161 Q. Now, after the City had taken over this property that it bought, after they conveyed the deeds, did you subsequently assess the real estate that was classified by you as non-operating real estate, being that list——

A. (Interrupting.) You mean the property that is included in that list that was taken over by the City?

Q. Yes.

A. No, it was not assessed. It was stamped "Exempt" and marked "City of Seattle".

Mr. Hanson: It is our position, so that Your Honor will understand it, that real estate of that character, assessed as real estate, where the lien is not completed until in the fall, under the decisions and under the statute, that the City had not acquired that property. Having acquired it the right to complete the lien falls.

The Court: When do contend that you actually acquired the real property?

Mr. Hanson: We acquired all the property on the 31st of March. The lien as to personal property attaches as soon as the property is assessed, and that is true. As to real property it does not, it attaches to real estate in the fall, on October. What is personal property is defined by the Statute, and the Assessor must obey that ruling.

Of course he had no records as to this particular non-operating
162 property. I am not arguing the case now, I am merely explaining that detail at this time for the convenience of the Court.

Q. Now, there was one other question I wanted to ask you regarding this letter from Mr. Jackson. Had you prior to the receipt of this letter had any conferences with him regarding the subject of this assessment?

A. I had.

Q. You had discussed the fact, had you, that he had been assessing property which was not strictly a part of the operating property of the company?

Mr. Howe: I will have to interpose an objection to that, Mr. Hanson. That is immaterial.

The Court: He may answer the question.

(Exception noted for Plaintiff.)

A. Yes, we had discussed that.

Q. What did you understand by the letter that you received on the 15th of March, in the light of your conferences with Mr. Jackson?

A. Why, I merely understood the letter to confirm what Mr. Jackson Had told me verbally.

Q. Meaning what?

A. Meaning that I was to classify, that is, to segregate a list of the traction company's holdings that had heretofore been assessed as operating property, power plants, transmission lines, and such real property as had not been taken over by the city, and assess them locally as commercial property, which I proceeded to do.

Q. And which you did?

163 A. Which I did.

Q. But you did not include in your local assessment the non-operating property which was sold to the City of Seattle?

A. No.

Q. Was that a full list of non-operating property taken from your rolls?

A. You mean in this list here?

Q. Yes.

A. Yes.

Mr. Hanson: That is all.

Cross-examination.

By Mr. Howe:

Q. Mr. Hull, all of the real estate that was assessed by Mr. Jackson, assuming it to be assessed, and that was turned over to the City, you left in the assessment?

A. Well, Mr. Howe, the assessment that I made from the ordinance, I exempted the real property.

Q. I mean you did not deduct from Mr. Jackson's valuation any real estate other than named on that list?

A. I deducted nothing from Mr. Jackson's assessment.

Q. That is what I wanted to get at. That is all.

By Mr. Hanson:

Q. In other words, the assessment was merely certified down to you?

A. His assessment was certified to me by the State Board of Equalization, along with the other public service corporations, and I have no authority to deduct.

164 Mr. Hanson: That is all.

(Witness excused.)

Mr. Hanson: That is our case.

Mr. Howe: That is our case, Your Honor.

The Court: Both sides rest.

Mr. Howe: Shall we proceed with the argument?

The Court: Yes.

165

June 14, 1920—9.30 a. m.

Hearing resumed. All parties present.

Mr. Howe: Mr. Evan- stepped out for a moment. I can proceed with the argument, but there is one thing I want to call Your Honor's attention, and it is this. You will remember that when Mr. Jackson was on the stand we submitted him a letter which he wrote to the Attorney General. I withdrew that letter at the time, and by oversight we did not offer it later, and we would like when Mr. Evans comes in to reopen the case so that we can offer that letter.

The Court: I was under the impression it was in the record.

Mr. Howe: No; I withdrew the application and did not offer it.

Mr. Hanson: I have no objection to the case being reopened on that point; but I want to object to it as incompetent, irrelevant and immaterial.

The Court: The letter will be received and exception allowed.

Letter in question is marked Plaintiff's Exhibit "H".

Mr. Hansen: While on that point, I thought I had put in all the data, but I find that there are some statements now that the assessor should have testified to, and Mr. Howe, I presume you have no objection to reopening the case for that purpose. It is not going to change the line of argument in any manner at all. It is simply as to how much the exact amount of these taxes is and how it is to be distributed and items of that character.

Mr. Howe: Doesn't that appear in the pleadings?

Mr. Hansen: It appears in my answer.

166 Mr. Howe: I am not making any point on that, that is about the distribution of the taxes.

Mr. Hansen: Yes. I will call attention to the paragraphs, paragraphs 13, 14, 15, 16 and 17 of my answer.

The Court: There are two cases shown here, but I assume they are consolidated for the purpose of this hearing, that is the Puget Sound Traction, Light & Power Company v. The City of Seattle, and the City of Seattle v. Puget Sound Traction, Light & Power Company.

Mr. Howe: It is all one. It is a cross-complaint.

Mr. Evens: There is just one case. The City and the Traction company are on the same side of the litigation.

Mr. Howe: I make no point on the distribution or the amount.

Mr. Hansen: So that the record may show that paragraphs 13, 14, 15, 16 and 17 of the county's answer so far as the allegations therein contained are set out is admitted to be true.

Mr. Howe: As to amounts, the total tax and the distribution. I do not know what else we could do.

Mr. Hansen: Just look them over, Mr. Howe.

Mr. Howe: I am ready to admit all the amounts in those paragraphs.

Mr. Hansen: See if there is anything else in there.

Mr. Howe: There are some legal conclusions there and I would not want to admit them. Better put him on the stand.

167 FRANK W. HULL, recalled as a witness on behalf of the defendants, being previously sworn, testified as follows:

Direct examination.

By Mr. Hansen:

Q. You have been sworn?

A. Yes, sir.

Q. Look at this paper, being the county's answer. Now prior to the commencement of this action had you already as county assessor distributed the valuations of all taxable property in King County to the several taxing districts therein, being the value as certified to you by the State Board of Equalization, and had you certified such distribution of values to the proper taxing officials of the several tax levying districts affected thereby, as set forth in paragraph 13 of the county's answer?

A. All of the assessed valuations of the various taxing districts within the county of King and of course within the city limits of the

City of Seattle affected by this tax were certified to the various taxes levying bodies before October 10, 1919.

Q. And they had been distributed prior to that?

A. They had been distributed prior to that.

The Court: Is that date material or important to the Court?

A. It is necessary that these total assessed valuations of the assessor's office be certified to the tax levying bodies in order that they make up a budget and estimate what the levy will be, and that is done prior to October. The state law states that the valuations must be on file in the county assessor's office on or before October 10th, and in order that they may make their levies the assessor must certify these valuations.

Q. On or before October 10, 1919, had the several tax levying bodies affected each separately levied taxes and certified to yourself as assessor?

A. Yes sir.

Q. The total amount of tax money to be raised in these several taxing districts on the 1919 assessed valuations, based upon the following levies: State of Washington 9.288 mills, County of King 16.512 mills, City of Seattle 30.42 to 32.20 mills, School District No. 1, Seattle, 13.5 mills?

A. They had.

Q. Said certificate of the city of Seattle, did that comprise some 12 separate taxing districts?

A. Yes sir; that comprises 12 taxing districts within the limits of the City of Seattle.

Q. Is that due to the change from time to time and the different limits?

A. On the annexation of the total present limits, yes sir.

Q. That based on the 1919 valuations, including the valuation aforesaid upon the street railway operating property of plaintiff, and based upon the aforesaid certifications of such taxing bodies, the following total amounts of taxes are to be raised and to be collected by the defendant William A. Gaines, as county treasurer, and to be paid and credited to the accounts of the treasuries of such several taxing districts, to-wit: State of Washington, \$2,734,549.15; County of King \$4,861,420.68; City of Seattle, \$7,714,683.20; School District No. 1, \$3,290,501.91; Total \$18,601,154.94?

169 A. Yes sir, that is correct.

Q. Now prior to the commencement of this action had there been placed upon the tax rolls of King County assessments for the purpose of taxation upon the taxable property therein, including the street railway operating property of plaintiff, and the taxes against all such property duly extended?

A. Yes sir.

Q. Now the taxes levied by the Commissioners of King County for the year 1919 upon the property in King County subject to such taxes, how many mills was that on the dollar?

A. It was 16.512 mills.

Q. Or a total money value of \$4,681,420.68?

A. That is based on the total valuation.

Q. And what was the valuation, the assessed valuation of the operating property of the company that is involved in this case?

A. As certified to me by the Tax Commission?

Q. Yes.

Mr. Howe: That is already in evidence.

A. \$5,640,000.00.

Q. And the full taxes upon the property for all purposes is \$401,017.76? In other words, the taxes that is included in this case is \$401,017.76.

A. Yes sir.

Q. Now it is alleged here that it is the duty of the auditor to certify in each assessment book or list that the foregoing sheets is a correct list of the taxes and so forth?

Mr. Howe: I think that is a matter of law.

Mr. Hanson: I think that is a matter of law.

170 A. Yes.

Q. And that the tax rolls are now and were at the time of the filing of this answer in the hands of the county treasurer of King County, William A. Gaines, for collection?

A. Yes sir.

Q. And this tax is and was at the time that this answer was filed due and payable?

A. Yes sir. I do not know exactly when the answer was filed now, but the taxes were due and payable the first Monday in February.

Q. How much of these taxes in money is due the State of Washington?

A. \$52,384.42.

Q. And the City of Seattle?

A. \$179,365.76.

Q. And School District No. 1?

A. \$76,140.00.

Q. And the County of King?

A. \$93,127.68.

Q. The total being how much?

A. \$401,017.76.

Q. From year to year preceding the year 1918—

The Court: Is there any point to be raised by either counsel with respect to the institution of this action before or after the date of October 10, 1919?

Mr. Howe: No. I think the complaint shows when the suit was instituted.

The Court: After October 10th?

Mr. Hanson: It would be after.

171 The Court: The complaint was filed in December.

Mr. Hanson: There are some legal questions there. They contend that we had not reached to a certain stage in our tax proceedings and we contend that we had.

Mr. Howe: I want the court to get it clear. The complaint was filed as I recollect it before the rolls were in the hands of the Treasurer, long before.

Mr. Hanson: I don't know as to that. The complaint was filed before February.

Mr. Howe: The file mark will show that.

Mr. Hanson: Now on this next question, it more properly should have been asked of Mr. Jackson, but he is not here and if there is no objection Mr. Hull can testify as to these facts. Counsel may object to the materiality of it.

Q. Mr. Hull, from year to year preceding the year 1918 had the company that is involved in this suit annually made return to the Tax Commission of the State of Washington of such property as they claimed as personal property within the limits of the City of Seattle and had the same been listed with the Tax Commission as street railway operating property?

Mr. Howe: Now we do not object on the ground that this witness is testifying to it; but we do object to it as immaterial and irrelevant.

The Court: I will not determine that matter at this time. It will be admitted and exception allowed.

A. I would say for the year 1918, and prior thereto, that the State Board of Equalization in the assessment of the public service corporations as situated in the City of Seattle and County of King included the assessment of the Puget Sound Traction, Light & Power Company. Whether they furnished special information to the tax board or not, I would not be in a position to state.

Q. Had the tax commission valued and assessed prior to the year 1919, the street railway operating property, both real and personal?

Mr. Howe: Same objection.

The Court: Objection overruled.

Mr. Howe: Exception.

A. They had.

Q. They had been assessed prior to 1919 and subsequent to 1911 as personal property?

Mr. Howe: Same objection.

The Court: The same ruling.

A. Yes sir.

Mr. Hanson: That is all.

Cross-examination.

By Mr. Evans:

Q. As a matter of fact when were these certifications made by your office to the several taxing districts?

A. That is a matter of record, but I can—it is in our files in the office, but I would not give the exact date without looking up these records, but it was subsequent to October 10th.

Q. Subsequent to October 10th?

A. Yes sir—prior to October 10th I mean to say.

Q. And subsequent to the date when the State Board of Equalization adjourned?

A. The State Board of Equalization adjourned the latter
173 part of September and all values were certified by me the next day after the State Board adjourned and it was added to the total cost of the already compiled assessment and certified right away.

Q. And the certification was made to you at the time the State Board adjourned and certified by you—

A. Yes sir, the latter part of September or the first of October.

By Mr. Howe:

Q. What did you say was the amount of taxes that the county commissioners had levied, I mean the percentage?

A. I will have to look at the figures to see.

Q. The millage I mean?

A. In order to make the question absolutely clear, an actual levy was made, the actual millage was made by the assessor's office. The county commissioners certify the total amount of money they require. The millage based upon the assessed valuation was 16.512.

Q. How is the total amount of \$401,000 made up? That does not represent 16 mills?

A. No sir, the \$401,000 taxes against the company represents the assessed valuation of \$5,640,000 upon which the State levy of 9.288 is figured, the county levy of 16.512, the school district of 13.5 mills and the various levies within the twelve taxing districts of the City of Seattle under the distribution of this property.

Q. In other words it includes the city levy?

A. It includes the city levy.

Q. Who made the city levy?

A. The city levy is made by the city council.

174 Q. Are you sure, will you swear that is the manner of making that levy?

A. As a matter of fact it is made by the city council.

Q. But as a matter of law does not the city council estimate the amount and the county commissioners make the levy?

A. No sir, they do not. That is not according to my idea.

Mr. Howe: That is all.

Redirect examination.

By Mr. Hanson:

Q. How are these items certified to you?

A. Of the city?

Q. For the city and the different departments?

A. The city budget is certified to me in an ordinance form. It shows the total millage from which the various revenues are to be derived, sewers, light, bonded indebtedness of certain portions of the city, different district within the city with reference to each levy, and applies to all and each of the separate sections of the city, but to which its own particular bonded indebtedness is added thereto. This is all checked by my office.

Q. How is the county certified?

A. The county levy or the county amount is certified to me so much for roads and bridges, so much for soldiers' relief, so much for current expenses and so much for each of the road districts.

Q. How are the State items certified to you?

A. In the same way, so much for schools, so much for permanent roadways, highways, permanent miscellaneous fund, and so on, and these are all added together and make the total amount.

Q. How are the school district items certified to you?

A. The same way, budget form, and it has added at the bottom there will be so much, but they are certified in budget form.

Mr. Hanson: That is all.

Recross-examination.

By Mr. Howe:

Q. Did the assessment which you had certified to you include the street railway lines or street railway property in Bellingham?

A. It did not.

Q. The company does own street railway property in Bellingham, does it not? You know that is a fact?

A. I assume that they do.

Q. You know it, don't you?

A. As a matter of fact, I don't know positively, but as a matter of common knowledge I know that they do.

Q. And this assessment certified to you did not include either the track in Bellingham or the street cars in Bellingham? This was separate from the rest of the property of the company, was it not?

A. The only definite amount that I know was simply the amount of \$5,640,000 certified to me as the personal assessment of the property within the city limits.

Mr. Howe: That is all.

176 Redirect examination.

By Mr. Hanson:

Q. It always has been certified to you in the same way?

A. Yes.

By the Court:

Q. That isn't clear. I don't understand in what way the street railway property at Bellingham was ever certified to you?

A. It never has been.

Mr. Howe: No, the point was this, that the state Tax Commission has not assessed all of the property of this company in this assessment which is street railway operating property.

The Witness: The certification read "in the County of King, street railway property in the county of King."

Mr. Hanson: That is all.

Mr. Howe: That is all.

(Witness excused.)

Mr. Howe: Shall I proceed with the argument?

The Court: Yes.

(Argument resumed.)

Judge's Certificate.

STATE OF WASHINGTON,
County of King, ss:

I, Austin E. Griffiths, one of the judges of the Superior Court of the State of Washington, in and for King County, and sitting in Department No. 10 of said court, and successor to the judge before whom the above entitled cause was tried, do hereby certify:

That the matters and proceedings embodied in the foregoing statement of facts are matters and proceedings occurring in said cause, and the same are hereby made a part of the record herein.

I do further certify that the same contains all the material facts, matters and proceedings heretofore occurring in said cause and not already a part of the record herein.

I do further certify that the foregoing statement of facts contains all of the evidence and testimony introduced upon the trial of said cause, together with all objections and exceptions made and taken to the admission or exclusion of testimony, and all motions, offers to prove and admissions and rulings thereon; and that Plaintiffs' Exhibits A, B, C, D, E, F, G, and H, and Defendants' Exhibits Nos. 1 and 2, hereto attached, are all the exhibits admitted upon the trial of said cause.

This certificate is also signed by virtue of the stipulation of all parties hereto, of date Jan. 14, 1920.

Done in open court this 24th day of January, A. D. 1921.
(Signed) Austin E. Griffiths, Judge, Successor to Clay Allen, Judge.

Plaintiff's Exhibit A.

Description and Inventory of Street Railway Properties of the Puget Sound Traction, Light & Power Co. and the Ordinances Governing Their Sale to the City of Seattle.

79 Description and Inventory of Street Railway Property of the Puget Sound Traction, Light and Power Co. Under Agreement of Sale With the City of Seattle.

80 *Description of Street Railway Property.*

The Puget Sound Traction, Light & Power Company, Seattle Division, will be referred to in this description as the Company, The City of Seattle will be referred to as the City.

Franchises, Contracts and Rights:

1. All franchises, and all rights and obligations conferred by ordinance or by permit of Board of Public Works or other public authority, now owned, enjoyed or devolving upon the Company, and all contracts and agreements now in effect entered into by the Company prior to September 1st, 1918, not including contracts and agreements with the Firm of Stone & Webster or with Corporations managed by said Firm; in any way pertaining or relating exclusively to the ownership, construction, reconstruction, repair, operation and use of street railways in the City of Seattle.

Right of Way and Miscellaneous Lands:

2. All of the rights of way and miscellaneous lands now owned by the Company within the corporate limits of the City of Seattle as shown in the following list:

Plat 5696.—The south sixteen (16) feet of Lot 21, and all of Lots 22, 30, 31, 32 and 33 in Block 4; and the south sixteen (16) feet of Lot 21 and all of Lot 22 in Block 5 of Wassom's Addition to Ravenna Park.

Plat 5702.—The north thirty (30) feet of Tract 3 of Dorffel's Supplemental to Wassom's Addition to Ravenna Park.

Plat 5669.—The north thirty (30) feet of Lots 1, 2, 3 and 4 in Block 16 of Ravenna Springs Park Supplemental Addition to the City of Seattle, except portions of Lots 3 and 4 deeded to the City of Seattle, together with the north thirty (30) feet of that part of Twenty-fifth Avenue Northeast vacated by Ordinance No. 27551.

Plat 5668.—A right of way twenty-four (24) feet in width extending through Ravenna Park from the west line of Ravenna Springs Park Supplemental Addition to the east line of Ravenna Avenue, as recorded in Volume 440 of Deeds, page 204, in the records of King County, Washington.

Plat 6294.—A right of way twenty (20) feet in width adjoining Ravenna Park, extending from the north line of East Fifty-fourth Street to the South line of East Fifty-sixth Street; also thirty (30) feet in width adjoining Ravenna Park, extending from the south line of East Fifty-sixth Street to the east line of Fifteenth Avenue Northeast, as recorded in Volume 212 of Deeds, page 242, and Volume of Deeds 573, page 337, in the records of King County, Washington.

Plat 5656.—A right of way forty (40) feet in width crossing the property of the Puget Mill Company, in the Southwest quarter (S. W. $\frac{1}{4}$) of the southwest quarter (S. W. $\frac{1}{4}$) of Section 13, Township 24 North, Range 3 East, as recorded in Volume 548 of Deeds, page 569, in the records of King County, Washington.

Plat 5716.—A right of way thirty-seven (37) feet in width, across Island No. 1, in Section 18, Township 24 North, Range 4 East, as recorded in volume 496 of Deeds, page 577, and Volume 650 of Deeds, page 396, in the records of King County, Washington.

Plat 6295.—An irregular tract of land located at the northeast corner of West Spokane Street and Alki Avenue, as described in Volume 543 of Deeds, page 491, in the records of King County, Washington, less portion condemned by the City of Seattle, under Ordinance No. 29062.

Plat 5689.—An irregular strip of land located in Block 44 of Denny-Fuhrman's Addition to the City of Seattle, as described in the following records of King County, Washington:

Volume 400 of Deeds, page 321.

Volume 403 of Deeds, page 588.

Volume 410 of Deeds, page 361.

Volume 821 of Deeds, page 398.

Volume 832 of Deeds, page 118.

Volume 841 of Deeds, page 8.

Plat 5731.—A right of way thirty (30) feet in width, across Block 18 of Porterfield's Addition to the City of Seattle, as described in Volume 231 of Deeds, page 539, of the records of King County, Washington.

Plat 5731.—A right of way thirty (30) feet in width, across Block 4 of Smith & Burn's Addition to the City of Seattle, as described in Volume 231 of Deeds, page 539, of the records of King County, Washington.

181 Plat 5707A.—All of Lots 1, 2, 3, 4, 5 and 6, Block 7, of Craven's Division of Green Lake Addition to the City of Seattle, less a thirty (30) foot right of way, deeded to the City of Seattle.

Plat 5684.—A right of way thirty (30) feet in width extending in a southerly direction across Lot 2, Section 6, Township 25 North, Range 4 East, from West Greenlake Way and Ashworth Avenue to Woodland Park Avenue, and occupied by a single track, the center line of which is ten (10) feet north of the southerly line of said right of way.

Plat 5692.—Lot 2 (less part deeded to the N. P. R. R.) and Lots 3 and 4 in Block 2 of Ross' Addition to the City of Seattle.

Plat 5760.—Lots 4, 5, 56, 57, 58, and 59, in Block 78; the south 27 feet of that portion of Lots 49, 50 and 51, and all that portion of Lots 1, 2 and 3, in Block 79, lying north of the section line between sections 11 and 14, Township 25 North, Range 3 East, all the above in Gilman's Addition to the City of Seattle.

Plat 5684.—A tract of land in Government Lot 2, Section 6, Township 25 North, Range 4 East, W. M. described as follows: Beginning at the intersection of the north line of Winona Avenue as platted in Hillman's Lake Front Division No. 1, produced north-easterly, and the east line of Woodland Park Avenue; thence north-easterly along the said north line of Winona Avenue produced a distance of 1535.4 feet more or less to the west line of Ashworth Avenue; thence north along the west line of Ashworth Avenue 118 feet more or less to a point of intersection with a line drawn parallel to and distant 239 feet from the north line of North Seventy-seventh Street as established by Ordinance No. 31199; thence west along said parallel line a distance of 298 feet more or less to the west line of the East one-half of the Northeast quarter of the Southwest quarter of the Northeast quarter of said Section 6; thence south along said west line 133 feet more or less to the south line of the North one-half of the southwest quarter of the northeast quarter of said Section 6; thence west along said south line 945 feet more or less to the East line of Woodland Park Avenue; thence south along said East line of Woodland Park Avenue 793 feet more or less to the point of beginning; excluding therefrom North Seventy-seventh Street as established by Ordinance No. 31199, containing ten (10) acres more or less.

Plat 5762.—Lot 7 and 16 in Block 332 of Seattle Tide Lands.

Plat 5724.—Lots 1 to 24 inclusive, in Block 13; Lots 1 to 10 inclusive in Block "C;" Lots 1 to 14 inclusive in Block "D;" except portions of Lots 1 to 7 inclusive, Block "D," deeded to King County, as recorded in Volume 1027 of Deeds at page 66, in the records of King County; all the above lots being in McGilvra's Third Addition to the City of Seattle.

Also Lots 1 to 24 inclusive of Block 27, as shown on the official maps of Lake Washington Shore Lands.

Plat 5678.—The eastern portion of Lake Dell Tract No. 16, described as follows: Beginning on the north line of said Tract Sixteen (16) at a point sixty (60) feet west of the northeast corner of said tract; thence east along the north line of said tract, sixty (60) feet to the northeast corner of said tract; thence south along the east line two hundred ninety (290) feet; thence in a northwesterly direction to the north line of said tract at the point of beginning; less portion condemned by the City of Seattle under Ordinance No. 30673.

Plat 5732.—An irregular tract of land being a portion of Lot five (5), Block one (1), Porterfield's Addition to the City of Seattle, as recorded in Volume 145 of Deeds, page 148 of the records of King County, Washington, less portion condemned by the City of Seattle.

Plat 5697.—Lots 3 and 4, Block 18, First Plat of West Seattle, by West Seattle Land & Improvement Company.

Plat 5759.—A portion of the so-called Winter's Tract in Section Nine (9), Township twenty-four (24) North, Range four (4) East, described in a deed recorded in Volume 818 of Deeds, at page 462, in the records of King County, Washington, less that portion condemned by the City of Seattle under Ordinance No. 30935.

Plat 5708.—Lots 7 and 8, Block A, City Gardens Addition to the City of Seattle.

Plat 5717.—Lots 11 to 14 inclusive, Block 21, T. Hanford's Addition to South Seattle.

Plat 5719.—Lots 2 and 11, Block 32, T. Hanford's Addition to the City of Seattle.

Plat 5726.—The south thirty (30) feet of Lots 14, 15, 16, 17, 18, 19 and 20, Block 19, Hillman City Division No. 2.

Plat 5727.—Lot 1, Block 14, Hillman City Addition to the City of Seattle, Division No. 6.

Plat 5713.—Lots 12 and 13, Block 8, H. E. Holmes' Addition to the City of Seattle.

Plat 5774.—The southeasterly half of Lot 10, all of Lots 11, 12, 13 and 14 and the westerly twenty (20) feet of Lot 15, Block 101, as shown on the official maps of Lake Union Shore Lands.

Plat 5674.—Lots 5 and 6, Block 10, McKenzie and Dempsey Lake Washington Addition.

182 Plat 5667.—Lot 1, Block 5; Lots 1 and 2, Block 6 (less the south thirty (30) feet condemned by City) and Lots 13 and 14, Block 6, Rainier Valley Second Addition to the City of Seattle.

Plat 5657.—Lots 1 and 2 (less part condemned by City) Block 1, Rainier Valley Addition to the City of Seattle.

Plat 5694.—The south fifty (50) feet of the west one-half of Tract No. 6, Sturtevant's Rainier Beach Acre Tracts.

Plat 5695.—Lots 2, 3, 4, 5 and 6, Block 16, Walker's Addition to the City of Seattle.

Plat 5676.—A portion of the so-called Marucca Tract in Section Nine (9), Township twenty-four (24) North, Range four (4) East, as described in Volume 815 of Deeds, page 631, of the records of King County, Washington.

Plat 5675.—An irregular tract of land particularly described as follows: Beginning at a point 685.74 feet west of, and 8.4 feet south of, the quarter section corner between Sections 28 and 33 in Township 25 North, Range 4 East, which said point is on the south line of Madison Street in the City of Seattle; running thence south 189.6 feet; thence west 305.2 feet to an intersection with the south line of said Madison Street; thence along the south line of said street north $58^{\circ} 9'$ east, 359.3 feet to the place of beginning.

Plat 5798.—A strip of land 12 feet in width, located in the Hanford Donation Land Claim in Township 24, North, Range 4 East, and described in a deed recorded in Volume 697 of Deeds, at page 558, in the records of King County, Washington.

The Company reserves the right to construct, reconstruct, maintain, operate and use in substantially their present locations, all pole lines, in which it owns an interest, now located on its street railway rights of way and used by the Company wholly or in part for light and power purposes.

Street Railway Track System:

3. All street railways and street railway tracks on the lands described in Section 2 hereof, and all street railways and street railway tracks in streets, alleys and public places; owned by the Company and occupied and used in the operation of its street railway system within the corporate limits of the City of Seattle, including all bridges, trestles and culverts, ballast, ties and rail supports, rails and fastenings, special work, paving, cable and counterweight construction, and crossings, fences and signs, embraced by and constituting such street railways.

Also, all interest owned by the Company in spur tracks located on premises owned by freight customers of the Company.

Rolling Stock:

4. All rolling stock, freight, passenger and miscellaneous cars owned by the Puget Sound Traction, Light & Power Co., Seattle Division, as follows:

Electric Passenger Cars.

Single End, Single Truck, One-Man Type.....	27	
Double End, Single Truck, One-Man Type.....	21	
Double End, Single Truck, Two-Man Type.....	24	
Single End, Double Truck, Two-Man Type.....	235	
Double End, Double Truck, Two-Man Type.....	123	
Double End, Double Truck, Trailers.....	10	
	<hr/>	440

Cable Passenger Cars.

Double End, Double Truck, Two-Man Type.....	37	
	<hr/>	477
Total Passenger Cars.....		

Miscellaneous Rolling Stock.

Motor Equipped Freight & Work Cars.....	27	
Freight & Work Cars without Motors.....	36	
	<hr/>	63
Total Rolling Stock.....		540

Railway Utility Equipment:

5.	1 Overland Touring Car.....	License No. 16787.
	1 Cadillac Touring Car.....	License No. 16785.
	1 Dodge Touring Car.....	License No. 16789.
	1 Buick Touring Car.....	License No. 16802.
183	1 Ford Car.....	License No. 122,833.
	1 White Tower Truck.....	License No. 122,829.
	1 General Vehicle Co. Electric Truck.....	License No. 122,830.
	1 Kelly Tower Truck.....	License No. 122,834.
	1 Harley-Davidson Motorecycle.....	License No. 192.
	1 Track Grinder.....	License No. 136,955.
	1 Track Welder.....	License No. 136,954.
	2 Tar Wagons.....	License No. 136,956.

Railway Distribution System:

6. This comprises all trolley wires and span wires owned by the Company used in the operation of the street railway, as described in Paragraph 3 herein, also all railway feeders up to the point of their entry to the substations of the Company.

The Railway Distribution System includes also the following proportionate interests in poles used wholly or in part for railway purposes:

Poles used exclusively for railway purposes.	Entire Interest.
Poles owned by the Company and used partly for Light & Power wires and partly for Railway wires.....	$\frac{1}{2}$ interest.
Poles owned jointly by the Company and one or more other parties and used by the Company exclusively for Railway Purposes.....	Company's entire interest.
Poles in which the Company owns $\frac{1}{2}$ interest and the City owns $\frac{1}{2}$ interest, used by the Company for both Railway and Light and Power wires.....	No interest.
Poles owned jointly by the Company and City of Seattle, used by Company partly for railway and partly for light and power, Company's ownership being more than one-half.....	A sufficient interest to make the ownership— $\frac{1}{2}$ City, $\frac{1}{2}$ Company.
Poles in which the Company owns $\frac{1}{2}$ interest, the other half being owned by a foreign company, and the City of Seattle having no interest, and used by the Company for both Light & Power and Railway purposes.....	$\frac{1}{6}$ interest.
Poles in which the Company owns $\frac{1}{3}$ interest, the City owns $\frac{1}{3}$ interest, and a foreign Company $\frac{1}{3}$ interest, and used by the Company for both Railway and Light & Power wires.....	No interest.

Transfer of above proportionate interests in poles to City is contingent upon City assuming its proportionate share of maintenance

Signal and Interlocking Apparatus:

7. This includes all wires, cables, insulators, telephone switchboards and instruments, and telephone booths used in connection with the Street Railway Train Dispatching System, and all signal and interlocking apparatus of the said street railway system owned by the Company in the City of Seattle.

Miscellaneous Items:

8. All roadway tools, railway line tools, engineering instruments and instruction apparatus owned and used exclusively by the Company in connection with its street railway system in the City of Seattle.

Car-houses, Shops, and Yards.

Fremont Car House:

9. All land, buildings, tracks, car house equipment and miscellaneous railway equipment located as follows:

Lots 1 to 11 inclusive, excluding the east 25 feet of Lot 7, Block 41, and Lots 1 to 10 inclusive, Block 42, and all vacated portions of alley between Blocks 41 and 42, Denny and Hoyt's Addition to the City of Seattle.

Green Lake Freight Sheds:

10. All land, buildings, tracks and miscellaneous railway equipment located as follows:

Lots 18 and 20 of the Replat of Block 14 of Woodlawn Addition to Green Lake.

East Jefferson Street Car House:

11. All land, buildings, tracks, car house equipment, and miscellaneous railway equipment located as follows:

184 Lots 7 to 32 inclusive, Block 7, Squire Park Addition to the City of Seattle.

Madrona Freight Terminal:

12. All land, tracks, and railway equipment located as follows:

Lots 7 and 8 in Block 47, and the north twenty (20) feet of Lot 1 in Block 48, as shown in the official maps of Lake Washington Shore Lands; also that portion of East Spring Street vacated between said blocks.

The north twenty (20) feet of Lot 3, Block 13, of Cascade Addition to the City of Seattle.

Portions of Lots 7 and 8 in Block 14 of McKenzie & Dempsey's Lake Washington Addition to the City of Seattle, as described in a deed recorded in Volume 683 of Deeds, at page 106, of the records of King County, Washington; also that portion of East Spring Street vacated between the above described portions of said Cascade Addition and McKenzie & Dempsey's Lake Washington Addition.

Madison Street Cable Station and Car House:

13. All land, buildings, car house and shop equipment, cable machinery and miscellaneous railway equipment located as follows:

An unplatted tract of land described as follows: Beginning at the southwest corner of Block 4 of Miles Addition to the City of Seattle; thence north along the west line of said Block 4 of Miles Addition 145.49 feet to the southerly marginal line of East Madison Street, and the northwest corner of said Block 4; thence southwesterly along said southerly marginal line of East Madison Street 209.7 feet to the east marginal line of 10th Avenue; thence south along the east marginal line of 10th Avenue 34.45 feet to the north marginal line of East Spring Street; thence east along said north marginal line of East Spring Street 178 feet to place of beginning, as recorded in Volume 742 of Deeds, at page 231, in the records of King County, Washington.

Yesler Way Cable Station and Car House:

14. All land, building, tracks, car house equipment, cable machinery, and all electrical equipment except switchboards, instruments, switches, wiring and other appurtenances used for light and power feeders, all located as follows:

A track of land described as follows; Beginning at the northwest corner of Block 53, Yesler's Third Addition to the City of Seattle; thence south along the west line of said Block 66 feet; thence east parallel with the north line of said block 306 feet; thence southerly 99 feet; thence east 104.24 feet to Government Meander Line; thence north $14^{\circ} 17' 02''$ east, 70.62 feet; thence north $22^{\circ} 32' 02''$ east, 104.60 feet; thence west 463.76 feet to place of beginning. Also the north 165 feet of Block 52, as shown in the official maps of Lake Washington Shore Lands.

James Street Car House and Cable Station:

15. All land, portion- of building-, tracks, car house equipment, cable machinery, and miscellaneous railway equipment located as follows:

Lot 1 and south 10 feet of Lot 2, Block 6, Eastern Addition to the City of Seattle.

North Seattle Car House and Yard:

16. All land, buildings, tracks, car house and miscellaneous railway equipment located as follows:

Block 63 and all of Block 64, except Lots 7 and 8 and the south 15 feet of lot 9, D. T. Denny's Home Addition to the City of Seattle.

Georgetown Land and Car Shops:

17. All those portions of Lots H & I, Queen Addition Supplemental to the City of Seattle and all that portion of a tract of land known as the Ada Blackwell Tract; lying East of the right-of-way of the Oregon-Washington Railway & Navigation Company, together with all buildings thereon and all tracks, railway equipment, shop and car house equipment, tools, etc., and all stock held for railway purposes.

In addition to the above all stock held for Railway purposes now located on:

Lots A, B, C, D, E, F, G, and those portions of lots H & I lying West of the right-of-way of Oregon-Washington Railway & Navigation Company, all in Queen Addition Supplemental to the City of Seattle.

Company reserves perpetual and uninterrupted use of the southerly track entering this property from Duwamish Avenue, from point of entrance to right of way of Oregon-Washington Railway and Navigation Company, and reserves also perpetual and uninterrupted use of the track branching therefrom and extending out into the filled-in bed of the Duwamish River, for the purpose in each case of moving cars and freight from Duwamish Avenue to
185 and from the Georgetown Power Station of the said Company; provided, however, the City of Seattle shall have the right to move said tracks to any location within one hundred feet south of the present tracks.

Ballard Freight Shed:

18. All land, buildings, tracks and miscellaneous railway equipment located as follows:

Lots 20 and 21, Block 167 Gilman Park Addition to the City of Seattle.

West Seattle Yard:

19. All land, structures, tracks and miscellaneous railway equipment located adjacent to West Seattle Substation, as follows:

Lots 15 and 16, Block 1, Holbrook's & Clark's Addition to the City of Seattle.

Miscellaneous Buildings:

20. All waiting stations, loading platforms, shelter sheds and other buildings of like nature owned by the Company and located

on the railway rights of way described herein or on lands leased and used by the Company exclusively for railway right of way purposes.

Property of the Company used exclusively for light and power purposes, such as meters, transformers, poles and fixtures, supplies, etc., now stored in buildings or on lands described herein is to remain the property of the Company, and the Company shall be allowed a reasonable time in which to remove all such property from premises to be conveyed to the City of Seattle.

Additional Property:

21. Any and all real and personal property, or interest, therein, not hereinbefore enumerated, or described, now owned, held, used, or occupied by said Company exclusively for local street railway purposes, excepting sub-stations and the land upon which the same are located, and excepting money and choses in action.

186 & 187 *Ordinances Governing Sale of Street Railway Properties of the Puget Sound Traction, Light & Power Company to the City of Seattle, the Purchase of Power, and the Agreements with the Puget Sound Electric Railway and the Pacific Northwest Traction Company for the Operation of Their Interurban Trains and Cars Over City Lines.*

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Ordinance No. 39025.

An ordinance relating to and specifying and adopting a plan or system of additions and betterments to, and extensions of, the existing municipal street railway system owned and operated by The City of Seattle, providing for the acquisition of and payment for certain street railway lines and street railway property and equipment, and issuing bonds in payment therefor, and providing for the creation of, and creating, a special fund to pay the principal and interest of such bonds.

Be it ordained by The City of Seattle as follows:

Section 1. Public interest and welfare require that the City of Seattle immediately purchase or otherwise acquire certain additions and betterments to, and extensions of, the existing municipal street railway system owned and operated by the City of Seattle, which additions, betterments and extensions consist of the street railway lines, street railway property and equipment thereof in the City of Seattle, belonging to the Puget Sound Traction, Light & Power Company, a Massachusetts corporation.

Section 2. The gross revenues to be derived from the operation of the municipal street railway system of the City of Seattle, including the additions and betterments to, and extensions thereof, herein provided for, at the rates of transportation charged, and to be charged, upon the entire system, will be sufficient in the

judgment of the council and of the corporate authorities of the city to meet all expenses of operation and maintenance, including the operation and maintenance of the proposed additions, betterments and extensions, and to provide all proportions or parts of revenue previously pledged as a fund for the payment of bonds, warrants and other indebtedness, with interest thereon, heretofore made payable out of the revenues of the existing municipal street railway system, and to permit the setting aside in a special fund, out of the gross revenues of the entire system, amounts sufficient to pay the interest on the bonds hereby authorized to be issued, as such interest becomes due and payable, and to pay and redeem all of such bonds at maturity. The amounts which the city council and corporate authorities have determined and do hereby determine will be so available for the payment out of such gross revenues into such special fund, to be used for the payment of the interest on such bonds, will, on the first days of February and August in each and every year, beginning with August in the year 1919, be not less than the interest at the rate of five per cent (5%) per annum, payable semi-annually, on the first days of March and September, respectively, next succeeding such days, on all outstanding bonds of the issue of Fifteen Million Dollars (\$15,000,000), to be issued payable at the times and in the manner hereinafter specified.

The city counsel and corporate authorities have likewise determined and do hereby determine that the amount so available for the payment out of such gross revenues into such special fund to be used for the payment of the principal of such bonds, on the first day of February, 1922, will be not less than Eight Hundred Thirty-three Thousand Dollars (\$833,000), and that there will be so available thereafter for payment out of such gross revenues into such special fund to be used for the payment of the principal of such bonds not less than Eight Hundred Thirty-three Thousand Dollars (\$833,000), on the first day of February in each and every year, to and including the year 1938, and not less than Eight Hundred Thirty-nine Thousand Dollars (\$839,000) on the first day of February, 1939.

Section 3. The City of Seattle hereby specifies and adopts the plan or system hereinafter set forth for making certain additions and betterments to, and extensions of, the existing municipal street railway system of the City of Seattle, to-wit:

The City of Seattle shall purchase, or otherwise acquire, the following street railway property of the Puget Sound Traction, Light & Power Company located in the City of Seattle, to-wit:

All of its street railway system, including street railways and street railway tracks, cables and cable lines, terminals, spurs, switches, crossovers, turntables and wyes, located in, on or upon public streets, alleys or other public places or public property or upon private rights of way or private property; all bridges, trestles and viaducts and approaches thereto; all rolling stock, cars and street railways machinery, appliances and equipment, of whatso-

ever kind or description; all automobiles, trucks, motorcycles, track grinders, track welders and wagons used in connection with the operation and maintenance of said street railway system; all trolley wires, span wires and railway power feeders up to the point of their entry into substations; all poles used exclusively for street railway purposes, and such interest in all other poles used in connection therewith as may be necessary or convenient in the operation of said street railway system; all wires, cables, insulators, switchboards, instruments, telephones and telephone booths used in connection with the street railway train dispatching system, all signal systems and safety devices and interlocking apparatus; all car houses, car barns, store houses, shops and yards, and all car house equipment, cable machinery, tools, supplies and stocks located therein; all waiting stations, platforms, sheds, small buildings, benches, sand boxes, freight sheds, depots and warehouses, gravel pits and bunkers; all tools and equipment, engineering instruments and instruction apparatus used in connection with said street railway system; all maps, drawings, operating records and valuation reports, all compilations, statistics, efficiency systems and reports and research work relating to said street railway system; all office equipment, cash registers, money counting machines, adding machines, office fixtures, furniture and printed forms of all kinds and descriptions used exclusively in connection with said street railway system; all real estate used or useful in connection with said street railway system, described as follows, to-wit:

(1) The south sixteen (16) feet of Lot 21 and all of Lots 22, 30, 31, 32 and 33 in Block 4; and the south sixteen (16) feet of Lot 21 and all of Lot 22 in Block 5 of Wasson's Addition to Ravenna Park.

(2) The north thirty (30) feet of Tract 3 of Dorffel's Supplemental to Wasson's Addition to Ravenna Park.

(3) The north thirty (30) feet of Lots 1, 2, 3 and 4 in Block 16 of Ravenna Springs Park Supplemental Addition to the City of Seattle, except portions of Lots 3 and 4 deeded to the City of Seattle, together with the north thirty (30) feet of that part of Twenty-fifth Avenue Northeast vacated by Ordinance No. 27551.

(4) A right of way twenty-four (24) feet in width, extending through Ravenna Park from the west line of Ravenna Springs Park Supplemental Addition to the east line of Ravenna Avenue, as recorded in Volume 440 of Deeds, page 204, in the records of King County, Washington.

(5) A right of way twenty (20) feet in width adjoining Ravenna Park, extending from the north line of East Fifty-fourth Street to the south line of East Fifty-sixth Street; also thirty (30) feet in width adjoining Ravenna Park, extending from the south line of East Fifty-sixth Street to the east line of Fifteenth Avenue Northeast, as recorded in Volume 212 of Deeds, page 242, and Volume of Deeds 573, page 337, in the records of King County, Washington.

(6) A right of way — (40) feet in width crossing the property of the Puget Mill Company, in the southwest quarter (S. W. $\frac{1}{4}$) of the Southwest quarter of (S. W. $\frac{1}{4}$) of Section 13, Township 24 North, Range 3 East, as recorded in Volume 548 of Deeds, page 569, in the records of King County, Washington.

(7) A right of way thirty-seven (37) feet in width, across Island No. 1, in Section 18, Township 24 North, Range 4 East, as recorded in Volume 496 of Deeds, page 577, and Volume 650 of Deeds, page 396, in the records of King County, Washington.

(8) An irregular tract of land located at the northeast corner of West Spokane Street and Alki Avenue, as described in Volume 543 of Deeds, page 491, in the records of King County, Washington, less portion condemned by the City of Seattle, under Ordinance No. 29062.

(9) An irregular strip of land located in Block 44 of Denny-Fuhrman's Addition to the City of Seattle, as described in the following records of King County, Washington:

Volume 400 of Deeds, page 321.

Volume 403 of Deeds, page 588.

Volume 410 of Deeds, page 361.

Volume 821 of Deeds, page 398.

Volume 832 of Deeds, page 118.

Volume 841 of Deeds, page 8.

(10) A right of way thirty (30) feet in width across Block 18 of Porterfield's Addition to the City of Seattle, as described in Volume 231 of Deeds, page 539, of the records of King County, Washington.

(11) A right of way thirty (30) feet in width across Block 4 of Smith and Burn's Addition to the City of Seattle, as described in Volume 231 of Deeds, page 539, of the records of King County, Washington.

(12) All of Lots 1, 2, 3, 4, 5 and 6, Block 7, of Craven's Division of Green Lake Addition to the City of Seattle, less a thirty (30) foot right of way, deeded to the City of Seattle.

(13) A right of way thirty (30) feet in width extending in a southerly direction across Lot 2, Section 6, Township 25 North, Range 4 East, from West Greenlake Way and Ashworth Avenue to Woodland Park Avenue, and occupied by a single track, the center line of which is ten (10) feet north of the southerly line of said right of way.

(14) Lots 1 to 11, inclusive, excluding the east 25 feet of lot 7, Block 41, and Lots, 1 to 10 inclusive, Block 42, and all vacated portions of alley between Blocks 41 and 42, Denny and Hoyt's Addition to the City of Seattle.

(15) All those portions of Lots H and I, Queen Addition Supplemental to the City of Seattle and all that portion of a tract of land known as the Ada Blackwell tract, lying east of the right of way of the Oregon-Washington Railway and Navigation Company; save

and except the Puget Sound Traction, Light & Power Company reserves perpetual and uninterrupted use of the southerly track entering this property from Duwamish Avenue, from point of entrance to right of way of Oregon-Washington Railway and Navigation Company, and reserves also perpetual and uninterrupted use of the track branching therefrom and extending out into the filled-in bed of the Duwamish River, for the purpose in each case of moving cars and freight from Duwamish Avenue, to and from the Georgetown Power Station of the said Company; provided, however, the City of Seattle shall have the right to move said tracks to any location within one hundred feet south of the present tracks.

(16) Lots 1 and 20 of the Replat of Block 14 of Woodlawn Addition to Green Lake.

(17) Lots 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32 of Block 7, of Squire Park Addition to the City of Seattle.

(18) Lots 7 and 8 in Block 47, and the north twenty (20) feet of Lot 1 in Block 48, as shown in the official maps of Lake Washington Shore Lands; also that portion of East Spring Street vacated between said blocks.

The north twenty (20) feet of Lot 3, Block 13, of Cascade Addition to the City of Seattle.

Portions of Lots 7 and 8 in Block 14 of McKenzie & Dempsey's Lake Washington Addition to the City of Seattle, as described in a deed recorded in Volume 683 of Deeds, at page 106, of the records of King County, Washington; also that portion of East Spring Street vacated between the above described portions of said Cascade Addition and McKenzie & Dempsey's Lake Washington Addition.

(19) An unplatted tract of land described as follows: Beginning at the southwest corner of Block 4 of Miles Addition to the City of Seattle; thence north along the west line of said Block 4 of Miles Addition 145.49 feet to the southerly marginal line of East Madison Street, and the northwest corner of said Block 4; thence southwesterly along said southerly marginal line of East Madison Street 209.7 feet to the east marginal line of 10th Avenue; thence south along the east marginal line of 10th Avenue 34.45 feet to the north marginal line of East Spring Street; thence east along said north line of East Spring Street 178 feet to place of beginning, as recorded in Volume 742 of Deeds, at page 231, in the records of King County Washington.

(20) A tract of land described as follows: Beginning at the northwest corner of Block 53, Yesler's Third Addition to the City of Seattle; thence south along the west line of said block 66 feet; thence parallel with the north line of said block 306 feet; thence southerly 99 feet; thence east 104.24 feet to Government Meander Line; thence north $14^{\circ} 17' 02''$ east, 70.62 feet; thence north $22^{\circ} 32' 02''$ east, 104.60 feet; thence west 463.76 feet to place of beginning. Also the north 165 feet of Block 52, as shown in the official maps of Lake Washington Shore Lands.

(21) Lot 1 and the south 10 feet of Lot 2, Block 6 of Eastern Addition to the City of Seattle.

(22) Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 in Block 63, and Lots 1, 2, 3, 4, 5, 6, 10, 11, 12, 13, 14 and the North forty-five (45) feet of Lot 9, in Block 64 of D. T. Denny's Home Addition to the City of Seattle.

(23) Lot 2 (less part deeded to the N. P. R. R.) and Lots 3 and 4 in Block 2 of Ross Addition to the City of Seattle.

(24) Lots 20 and 21 in Block 167 of Gilman Park Addition to the City of Seattle.

(25) A tract of land in Government Lot 2, Section 6, Township 25 North, Range 4 East, W. M. described as follows: Beginning at the intersection of the north line of Winona Avenue as platted in Hillman's Lake Front Division No. 1, produced northeasterly, and the east line of Woodland Park Avenue; thence northeasterly along the said north line of Winona Avenue produced a distance of 1535.4 feet more or less to the west line of Ashforth Avenue; thence north along the west line of Ashworth Avenue 118 feet more or less to a point of intersection with a line drawn parallel to and distant 239 feet from the north line of North Seventy-seventh Street, as established by Ordinance No. 31199; thence west along said parallel line a distance of 298 feet more or less to the west line of the East One-half of the Northeast Quarter of the Southwest Quarter of the Northeast Quarter of said Section 6; thence south along said west line 133 feet more or less to the south line of the North One-half of the Southwest Quarter of the Northeast Quarter of said Section 6; thence west along said south line 945 feet more or less to the East line of Woodland Park Avenue; thence south along said East line of Woodland Park Avenue 793 feet more or less to the point of beginning; excluding therefrom North Seventy-seventh Street as established by Ordinance No. 31199, containing ten (10) acres more or less.

(26) Lots 15 and 16 in Block 1 of Holbrook & Clark's Addition to the City of Seattle.

(27) Lots 7 and 16 in Block 332 of Seattle Tide Lands.

(28) Lots 1 to 24 inclusive in Block 13; Lots 1 to 10 inclusive in Block "C"; Lots 1 to 14 inclusive in Block "D"; except portions of Lots 1 to 7 inclusive, Block "D", deeded to King County, as recorded in Volume 1027 of Deeds at page 66, in the records of King County; all the above lots being in McGilvra's Third Addition to the City of Seattle.

191 Also Lots 1 to 24 inclusive of Block 27 as shown on the official maps of Lake Washington Shore Lands.

(29) Lots 4, 5, 46, 47, 58 and 59, in Block 78; the south 27 feet of that portion of Lots 49, 50 and 51, and all that portion of Lots 1, 2 and 3, in Block 79, lying north of the section line between sections 11 and 14, Township 25 North, Range 3 East, all the above in Gilman's Addition to the City of Seattle.

(30) The eastern portion of Lake Dell Tract, No. 16, described as follows: Beginning on the north line of said Tract Sixteen (16) at a point sixty (60) feet west of the northeast corner of said tract; thence east along the north line of said tract, sixty (60) feet to the

northeast corner of said tract; thence south along the east line two hundred ninety (290) feet; thence in a northwesterly direction to the north line of said tract at the point of beginning; less portion condemned by the City of Seattle under Ordinance No. 30673.

(31) An irregular tract of land being a portion of Lot Five (5), Block One (1), Porterfield's Addition to the City of Seattle, as recorded in Volume 145 of Deeds, page 148 of the records of King County, Washington, less portion condemned by the City of Seattle.

(32) Lots 3 and 4, Block 18, First Plat of West Seattle, by West Seattle Land & Improvement Company.

(33) A portion of the so-called Winter's Tract in Section Nine (9), Township twenty-four (24) North, Range Four (4) East, described in a deed recorded in Volume 818 of Deeds, at page 462, in the records of King County, Washington, less that portion condemned by the City of Seattle under Ordinance No. 30935.

(34) Lots 7 and 8, Block A, City Gardens Addition to the City of Seattle.

(35) Lots 11 to 14, inclusive, Block 21, T. Hanford's Addition to South Seattle.

(36) Lots 2 and 11, Block 32, T. Hanford's Addition to the City of Seattle.

(37) The south thirty (30) feet of Lots 14, 15, 16, 17, 18, 19 and 20, Block 19, Hillman City Division No. 2.

(38) Lot 1, Block 14, Hillman City Addition to the City of Seattle, Division No. 6.

(39) Lots 12 and 13, Block 8, H. E. Holmes Addition to the City of Seattle.

(40) The southeasterly half of Lot 10, all of Lots 11, 12, 13 and 14 and the westerly twenty (20) feet of Lot 15, Block 101, as shown on the official maps of Lake Union Shore Lands.

(41) Lots 5 and 6, Block 10, McKenzie and Dempsey Lake Washington Addition.

(42) Lot 1, Block 5; Lots 1 and 2, Block 6, (less the south thirty (30) feet condemned by city) and lots 13 and 14, Block 6, Rainier Valley Second Addition to the City of Seattle.

(43) Lots 1 and 2 (less part condemned by city) Block 1, Rainier Valley Addition to the City of Seattle.

(44) The south fifty (50) feet of the west one-half of Tract No. 6, Sturtevant's Rainier Beach Acre Tracts.

(45) Lots 2, 3, 4, 5 and 6, Block 16, Walker's Addition to the City of Seattle.

(46) A portion of the so-called Marueca Tract in Section Nine (9), Township twenty-four (24) North, Range Four (4) East, as described in Volume 815 of Deeds, page 631, of the records of King County, Washington.

(47) An irregular tract of land particularly described as follows: Beginning at a point 685.74 feet west of, and 8.4 feet south of, the quarter section corner between Sections 28 and 33 in Township 25 North, Range 4 East, which said point is on the south line of Madison Street in the City of Seattle; running thence south 189.6 feet; thence west 305.2 feet to an intersection with the south line of said

Madison Street; thence along the south line of said street north 8° 9' east, 359.3 feet to the place of beginning.

(48) A strip of land 12 feet in width located in the Hanford Donation Land Claim in Township 24 North, Range 4 East, and described in a deed recorded in Volume 697 of Deeds, at page 558, in the records of King County, Washington.

Also any and all real and personal property, or interest, therein, not hereinbefore enumerated, or described, now owned, held, used, or occupied by said company exclusively for local street railway purposes, excepting substations and the land upon which the same are located, and excepting money and choses in action.

The estimated cost of the system or plan herein described is declared, as near as may be, to be the sum of Fifteen Million Dollars (\$15,000,000.00).

Section 4. In order to carry out the plan or system specified and adopted in Section 3 of this ordinance, the City of Seattle shall issue and sell its negotiable bonds in a sum not exceeding Fifteen Million

Dollars (\$15,000,000.00), which bonds shall bear the date of 1922 their issue and shall be of the denomination of One Thousand

Dollars (\$1,000), each, shall be numbered from one up, consecutively, and shall mature as follows:

Bonds numbered 1 to 833, inclusive, on March 1, 1922;
Bonds numbered 834 to 1666, inclusive, on March 1, 1923;
Bonds numbered 1667 to 2499, inclusive, on March 1, 1924;
Bonds numbered 2500 to 3332, inclusive, on March 1, 1925;
Bonds numbered 3333 to 4165, inclusive, on March 1, 1926;
Bonds numbered 4166 to 4998, inclusive, on March 1, 1927;
Bonds numbered 4999 to 5831, inclusive, on March 1, 1928;
Bonds numbered 5832 to 6664, inclusive, on March 1, 1929;
Bonds numbered 6665 to 7497, inclusive, on March 1, 1930;
Bonds numbered 7498 to 8330, inclusive, on March 1, 1931;
Bonds numbered 8331 to 9163, inclusive, on March 1, 1932;
Bonds numbered 9164 to 9996, inclusive, on March 1, 1933;
Bonds numbered 9997 to 10,829, inclusive, on March 1, 1934;
Bonds numbered 10,830 to 11,662, inclusive, on March 1, 1935;
Bonds numbered 11,663 to 12,495, inclusive, on March 1, 1936;
Bonds numbered 12,496 to 13,328, inclusive, on March 1, 1937;
Bonds numbered 13,329 to 14,161, inclusive, on March 1, 1938;
Bonds numbered 14,162 to 15,000, inclusive, on March 1, 1939;

Such bonds shall bear interest at the rate of five per cent. (5%) per annum, payable semi-annually, on the first days of March and September, respectively, for which interest coupons shall be attached to, and be a part of, such bonds, both principal and interest of such bonds to be payable in gold coin of the United States, of the present standard of weight and fineness, at the places therein designated. Said bonds shall be an obligation only against the special fund created and established in Section 5 of this ordinance.

Section 5. There shall be, and is, hereby created and established, a special fund to be called "Municipal Street Railway Bond Fund,

1919." The City of Seattle, after providing for the payment of the proportions or parts of the revenues of the municipal street railway system previously pledged as a fund for the payment of bonds, warrants or other indebtedness, does hereby irrevocably obligate and bind itself to pay into such fund out of the gross revenues of such municipal street railway system, and all additions, betterments to, and extensions of, such system, at any time hereafter acquired, before each semi-annual installment of interest falls due, a sum equal to such semi-annual installment of interest upon all such bonds then outstanding and unpaid; and annually on or before the first day of March, beginning with March 1, 1922, and to and including March 1, 1938, the additional sum of Eight Hundred Thirty Three Thousand Dollars (\$833,000), and on or before the first day of March, 1939, the additional sum of Eight Hundred Thirty Nine Thousand Dollars (\$839,000), for the payment of the principal of such bonds, at which time all of such bonds with interest shall be fully paid. Such fund is to be drawn upon for the sole purpose of paying the principal and interest of such bonds from and after the date of such bonds and so long as obligations are outstanding against such fund. The City Treasurer of the City of Seattle shall, semi-annually, one calendar month prior to the date upon which any interest, or principal and interest, shall become due, set aside and pay into such fund from the gross revenues of the entire municipal street railway system of the City of Seattle, now belonging to it, including the additions, betterments and extensions herein provided for, and any street railway property which it may hereafter acquire, with the equipment thereof, a sum equivalent to the amount of interest so falling due, upon all bonds issued hereunder, and then outstanding, and annually one calendar month prior to the first day of March in each and every year, beginning with the year 1922, and to and including the year 1918, the sum of Eight Hundred Thirty-three Thousand Dollars (\$833,000), and one calendar month prior to the first day of March, 1939, the sum of Eight Hundred Thirty-nine Thousand Dollars (\$839,000), as the principal of such bonds falls due, and until all of such bonds with interest thereon be fully paid, and such fixed amounts out of such gross revenues are hereby pledged to such semi-annual payments of interest and such annual payments of principal, and shall constitute a charge upon such gross revenues superior to all charges whatsoever, including charges for maintenance and operation, save and except the charges upon such revenues heretofore created for the payment of principal and interest of One Hundred Thousand Dollars (\$100,000), Seattle Municipal Street Railway Bonds, 1917, authorized by Ordinance No. 37851, as amended by Ordinance No. 37923; and save and except the charges upon such revenues heretofore created for the payment of principal and interest of Five Hundred Fifty Thousand Dollars (\$550,000), "Railway Extension Bonds, Series A, 1918," authorized by Ordinance No. 38666, and save and except the charges upon such revenues sufficient to pay warrants drawn upon the City Railway Fund of the City of Seattle issued prior to the taking effect of this ordinance.

The City Treasurer is hereby directed to make payment of the bonds and coupons herein authorized, as the same fall due from the moneys in such "Municipal Street Railway Bond Fund, 1919," and from no other source. The payment of such bonds and coupons as they fall due, is hereby declared to be the only charge which has been made upon such fund or which will ever be made thereon, until all of such bonds and the interest thereon shall have been fully paid. The City of Seattle hereby binds itself not to sell, lease or in any manner dispose of the municipal street railway system now belonging to it, or which may hereafter belong to it, including the additions, betterments and extensions herein provided for, until all obligations outstanding against, or payable from, the special fund hereby created, shall have been paid in full, or in case it shall sell or dispose of the same before payment, it shall not make any sale or disposition, without then or theretofore providing that from the proceeds of any such sale or disposition, after the payment of all prior charges, there shall be placed in said special fund a sum sufficient in amount to discharge, and to be used for no other purpose than the discharge, of principal and interest of all bonds issued hereunder and then remaining unpaid, and it shall not, in any event, sell or dispose of such municipal street railway system or any substantial part thereof, for a sum less than enough to discharge and pay the bonds herein authorized, and the interest thereon. The City of Seattle further binds itself to establish and maintain rates for transportation upon such municipal street railway system which shall provide sufficient revenues to permit such sums being paid into such special fund which the City has pledged to be set aside semi-annually for interest, and annually for principal, as herein provided, to be applied to the payment of principal and interest of the bonds herein authorized, until such bonds have been paid in full, and in addition thereto all costs of operation and maintenance, and all bonds, warrants and indebtedness for which any revenues of such system have heretofore been previously pledged.

Section 6. The form of such bonds and coupons shall be substantially as follows:

No. —.

\$1,000.00.

United States of America,

State of Washington,

County of King,

City of Seattle.

Seattle Municipal Street Railway Bond, 1919.

Know all men by these presents, That the City of Seattle, in the County of King, State of Washington, is justly indebted and for value received hereby promises to pay to the Bearer, or if registered, to the registered holder hereof, on the first day of —, 19—, the principal sum of One Thousand Dollars (\$1,000), with interest

thereon at the rate of five per cent. (5%) per annum payable semi-annually, on the first days of March and September, in each year, upon the presentation and surrender of the annexed interest coupons. Both principal and interest of this bond are payable in gold coin of the United States of America, of the present standard of weight and fineness, at the City Treasurer's office in the City of Seattle, or at the Washington Fiscal Agency in New York, at the option of the holder, solely out of the special fund of the City of Seattle, known as the "Municipal Street Railway Bond Fund, 1919," which fund can be used for no other purpose than the payment of principal and interest of the series of bonds, of which this is one. The said fund has been created and the said series of bonds authorized by Ordinance No. —, approved — —, 19—, which ordinance provides for the semi-annual payment into the said fund from the gross revenues of the entire street railway system of the City of Seattle, including any additions or betterments to and extensions of such system which may be hereafter acquired, of sufficient funds to meet the principal and interest of this series of bonds, as they fall due. The City of Seattle hereby covenants with the holder of this bond, that the City of Seattle will keep and perform all of the covenants and conditions and promises in said ordinance contained, to be by it kept and performed. The City of Seattle and corporate authorities have provided for the payment of the amount or proportional part of the revenues of the municipal street railway system previously pledged as a fund for the payment of bonds, warrants or other indebtedness, and after having so provided, do hereby irrevocably obligate and bind the City to pay into the special fund created by the ordinance authorizing the issuance of this bond and out of the gross revenues of such municipal street railways system and all additions and betterments to, and extensions of, such system hereafter acquired, even though the balance of such gross receipts thereafter remaining may

194 be insufficient to pay the cost of maintaining and operating said system and said additions and betterments thereto and extensions thereof, a sum equal to five per cent. (5%) per annum, payable semi-annually, on all unpaid bonds of the issue of Fifteen Million Dollars (\$15,000,000), to be issued under said ordinance and pursuant thereto, and beginning with March 1, 1922, and annually on the first day of March thereafter, to and including March 1, 1938, the additional sum of Eight Hundred Thirty-three Thousand Dollars (\$833,000), and on March 1, 1939, the additional sum of Eight Hundred Thirty-nine Thousand Dollars (\$839,000) on which date all of such bonds, together with the interest thereon shall be fully paid.

The City of Seattle further binds itself to establish and maintain rates for transportation upon such municipal street railway system which shall provide sufficient revenues to permit the payment into such special fund of the stipulated sums which the city has pledged to be set aside semi-annually for interest and annually for principal, as provided in such ordinance to be applied to the payment of principal and interest of the bonds authorized by such ordinance, until

such bonds have been paid in full. This bond is one of a series of bonds amounting to Fifteen Million Dollars (\$15,000,000.00) issued by the City of Seattle, under the authority of its charter and the laws and constitution of Washington, and in particular Chapter 150 of the Laws of Washington for 1909, as amended, for the purpose of providing funds for enlarging and extending the municipal street railway system of said city, and this bond has been issued in full compliance with said charter, laws and constitution. This bond is subject to registration as to principal, or as to both principal and interest, in accordance with the provisions endorsed hereon.

It is hereby certified and recited, That all acts, conditions and things required to be done precedent to and in the issuance of this bond, have happened, been done and performed, as required by law.

In witness whereof, The City of Seattle, by authority of its City Council, has caused this bond to be sealed with its seal, signed by its Mayor, and attested by its City Comptroller and ex-officio City Clerk, and has caused the coupons annexed hereto to be signed with facsimile of the signatures of said officials, all as of the — day of —, 19—. —, Mayor. Attest: —, City Comptroller and ex-officio City Clerk.

Form of Coupon.

No. —.

\$25.00.

On — —, 19—, the City of Seattle, Washington, will pay to bearer, at its City Treasurer's Office, or at the Washington Fiscal Agency in New York City, Twenty-five Dollars (\$25.00) in gold coin, solely from the special fund known as "Municipal Street Railway Bond Fund, 1919," said sum being six months' interest, due that date, on Seattle Municipal Street Railway Bond, dated — —, —, and numbered —. —, Mayor. Attest: — —, City Comptroller and ex-Officio City Clerk.

Section 7. That the said bonds shall contain all of the provisions set forth in the foregoing form, and shall be signed by the Mayor and attested by the City Comptroller and ex-officio City Clerk, under the seal of the City, and each of said coupons shall be signed with the facsimile of the signature of the said officials. That on the reverse side of each bond shall be printed suitable forms for the registration of principal or for principal and interest of said bonds.

Section 8. This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the city charter.

195 Passed the City Council the 31st day of December, 1918, and signed by me in open session in authentication of its passage this 31st day of December, 1918. T. H. Bolton, President of the City Council.

Approved by me this 31st day of December, 1918. Ole Hanson, Mayor.

Filed by me this 31st day of December, 1918. Attest: H. W. Carroll, City Comptroller and ex-Officio City Clerk, By ———, Deputy Clerk. (Seal.)

Published ———, ———. ———, City Comptroller and ex-Officio City Clerk, By ———, Deputy Clerk.

An ordinance relating to the municipal street railway system of the City of Seattle, providing for the acquisition of certain street railway lines, property and equipment as an addition and betterment thereto and extension thereof; and specifying the terms, and authorizing the making, of certain contracts in connection therewith.

Be it ordained by the City of Seattle as follows:

Section 1. That in order to acquire the street railway system of the Puget Sound Traction, Light & Power Company in the City of Seattle, and certain real and personal property and equipment used and useful in connection therewith, as an addition and betterment to, and extension of, the existing municipal street railway system, as provided for by Ordinance No. 39025 approved the 31st day of December, 1918, the City of Seattle shall purchase the street railway system, property and equipment referred to in said ordinance, which said street railway system, property and equipment are more fully enumerated and described in that certain inventory filed in the office of the city comptroller on the 30th day of December, 1918, and bearing Comptroller's File No. 72055, which said inventory has been heretofore examined by the city council and found to contain a true, correct and complete list and description of the property to be purchased pursuant to this ordinance.

Section 2. That the purchase price of the aforesaid street railway system, property and equipment shall be the sum of Fifteen Million Dollars (\$15,000,000) in the utility bonds authorized by said Ordinance No. 39025, which said bonds shall be delivered in payment for said street railway system, property and equipment at the time, in the manner and under and subject to the terms and conditions, specified in the contract and agreement hereinafter provided for and set forth in Section 4 hereof.

Section 3. That the purchase herein authorized and directed shall be consummated only upon the terms and conditions specified in said contract and agreement, nor shall any of said bonds be delivered to said Puget Sound Traction, Light & Power Company unless and until the said company shall have done and performed all acts and things required of it to be done and performed in and by the terms and provisions of said contract and agreement. And no officer, agent or employee of the City of Seattle shall have power, by agreement, acquiescence, or estoppel, to in any way modify, waive, abrogate or alter said contract and agreement or any portion or part thereof.

Section 4. That in order to provide for the purchase of said street railway system, property and equipment, the mayor and city comptroller and ex-officio city clerk be, and they are, hereby authorized and directed, for and on behalf of the City of Seattle, to enter into, and to secure the proper acknowledgment of, a contract and agreement with the Puget Sound Traction, Light & Power Company, and to attach thereto as Exhibit "A" thereof, a copy of said inventory, said contract and agreement to be in words and figures as follows, to-wit:

This agreement, made and entered into pursuant to Ordinance No. — by and between the City of Seattle, a municipal corporation organized and existing under and by virtue of the laws of the State of Washington, hereinafter called the City, and Puget Sound Traction, Light & Power Company, a corporation, organized and existing under the laws of the State of Massachusetts, and doing business in the State of Washington, hereinafter called the Company, witnesseth:

Whereas, the Company is the owner of a certain street railway system in the City, and certain real and personal property and equipment used and useful in connection therewith, all of which is more fully described in that certain inventory filed in the office of the City Comptroller on the 30th day of December, 1918, and bearing Comptroller's File No. 72055, and which is hereinafter designated as the property, a copy of said inventory being hereto attached and marked Exhibit "A"; and

Whereas, the Company is the owner of certain franchise rights and privileges in the City; and

Whereas, the City has duly enacted Ordinance No. 39025, approved the 31st day of December, 1918, providing for the acquisition of the property as an addition and betterment to, and extension of, its existing street railway system; Now, therefore,

For and in consideration of the covenants and agreements hereinafter contained, and the considerations hereinafter expressed, the Company agrees to sell to the City, and the City agrees to buy, the property, for the sum of fifteen million dollars (\$15,000,000.00) in utility bonds, authorized by said Ordinance No. 39025, payment to be made in the manner, and subject to the terms and conditions hereinafter expressed.

The Company shall, prior to or at the time of delivery of the warranty deed and bill of sale hereinafter provided for, furnish to the City at the Company's expense, certificates of title from two reliable local abstract companies, to be designated by the city council, showing and certifying that after diligent search for real and chattel liens and encumbrances and conditional sales, the title to the property is found to be and is in the Company free and clear of all liens and encumbrances whatsoever. Said certificates shall run to, and recite that they are furnished at the request of, the City. The Company shall notify the city council, in writing, when it is ready to have the title search started by the abstractors, and the city council shall, by resolution, designate said abstract companies and request said search within three days thereafter. Delay in preparing and furnishing said certificates shall not excuse the Company from performing its

covenants within the time provided in this agreement, nor relieve the Company from liability to pay the liquidated damages hereinafter provided for in case said covenants be not performed within the time limits of this agreement; Provided that in respect to any tract or tracts of land the Company may furnish in lieu of such certificate a policy or policies of title insurance issued by a responsible title insurance Company; and in case the Company shall be unable to deliver good title to any tract or tracts of land or interest therein as herein required such failure on the part of the Company shall not be held to be a failure of performance on the part of the Company within the meaning hereof if the Company shall deliver possession of such land or lands, and if any such defect in the title thereto does not prevent the full enjoyment and operation by the City of the property as a street railway system; and if the Company shall at the time of the delivery of such certificates of title indemnify the City to the satisfaction of the City against all cost, damage, and expense which the City may suffer or incur in the perfecting of its title to any such land or interest by the exercise of eminent domain.

Within forty-five (45) days from and after date hereof, the Company shall make, execute and deliver to the City a good and sufficient warranty deed and bill of sale, in form to be approved by the City, and accompanied with proper evidence of authority to execute and acknowledge the same, selling and conveying to the City the property free and clear of all liens, claims, demands and encumbrances whatsoever; Provided that judgments stayed by the giving of good and sufficient supersedeas bonds shall not be considered liens or encumbrances within the meaning of this and the preceding paragraph, if good and sufficient indemnity bonds indemnifying, protecting and saving the City harmless from said judgments be furnished to the City by the Company through the abstract companies with said certificates of title, and if the judgments so stayed be enumerated and described in said certificates, together with guarantees therein that said judgments have been so stayed by so giving good and sufficient supersedeas bonds and that the indemnity bonds are good and sufficient to hold and save the City harmless therefrom.

Forthwith upon the delivery of said deed and bill of sale to the City by the Company, the City shall have the right to enter into possession of each and every part of the property and to proceed to operate the same, with all rights incident thereto, and to receive all of the revenues arising therefrom, with no obligation whatsoever to account to the Company for the same or any part thereof, save and except to provide therefrom for the payment of the interest and principal of the utility bonds authorized by said Ordinance No. 29025, as therein provided, and subject to the terms and conditions of this agreement.

At the time that the Company delivers to the City its warranty deed and bill of sale to the property, or prior thereto, the Company shall also make, execute and deliver to the City an instrument in form to be approved by the City, wherein and whereby the Company shall surrender to the City each and every franchise and permit by

virtue of which the Company operates the property, or any part thereof, whether such franchises or permits were granted by the City or by other municipalities now a part of the City; and at the same time, and in addition thereto, the Company shall, by quit claim deed, transfer to the City all such street railway franchises and permits granted the Company by King County pursuant to which the Company operates any part of the property within the corporate limits of the City.

At the time of the delivery of said deed and bill of sale, or prior thereto, the Company shall pay to the City in full its gross earnings tax, computed to the date of delivery of said deed and bill of sale; likewise, within the same time, the Company shall pay in full all general and special excises, taxes and assessments and public charges of whatsoever nature which are or may become a lien upon, or become enforceable against, said property, or any portion thereof, or upon or against the income therefrom, and shall forthwith file with the City Comptroller receipts or duplicate receipts showing such payment; Provided, that state, county and municipal taxes levied against the property for the year 1919 shall be paid, before the same
198 shall become delinquent, by the respective parties hereto, in amounts proportional to the respective periods of time that said parties are respectively in possession of said property during the year 1919.

The company hereby agrees that it will, within forty-five (45) days from and after the date hereof, and prior to the delivery of such deed and bill of sale, abandon and dismiss its appeal from that certain judgment in the Superior Court of the State of Washington for King County in Cause No. 123,621, entitled "The City of Seattle v. The Puget Sound Traction, Light & Power Company," in which said judgment was adjudged and determined the amount which the company should pay to the city for the use of the Fremont Avenue bridge; and at the time of the delivery of said deed and bill of sale, or prior thereto, the company shall pay to the city an amount equal to the prorated amount due for the use of such bridge computed to the date of delivery of said deed and bill of sale on the basis of Seven Hundred Dollars (\$700.00) per month, together with all amounts due for electric current furnished the company by the city from June 15, 1917, to date of such delivery of deed and bill of sale, at one cent (1c) per K. W. H.; and upon the transfer of the property to the city the city shall satisfy such judgment.

The company hereby agrees that it will, within forty-five (45) days from and after the date hereof, and prior to the delivery of said deed and bill of sale, likewise abandon and dismiss its appeals from the following judgments, to-wit:

(1) That certain judgment filed on the 1st day of May, 1918, in the Superior Court of the State of Washington, for King County, in Cause No. 124,828, entitled "State of Washington ex rel. The City of Seattle v. Puget Sound Traction, Light & Power Company":

(2) That certain judgment filed on the 21st day of June, 1918, in the Superior Court of the State of Washington, for King County, Cause No. 120,762, entitled "State of Washington ex rel. The City of Seattle v. Puget Sound Traction, Light & Power Company":

(3) That certain judgment filed on the 15th day of June, 1917, in the United States District Court for the Western District of Washington, Northern Division, in Cause No. 2046, entitled "Seattle Electric Company v. The City of Seattle, et al."

Upon full and complete performance of all its covenants by the company, and the transfer of the property pursuant hereto, the company shall be under no obligation to construct further paving by reason of the judgments in said causes No. 124,828 and No. 120,762 above mentioned.

Pending the consummation or termination of this agreement the city shall not require the company to do any paving except such as may be determined by the Board of Public Works to be necessary for the public safety.

Pending the consummation of this agreement, and until the causes hereinbefore mentioned are dismissed pursuant hereto, all litigation in respect to the same shall be stayed and remain in statu quo, and the parties hereby agree to prepare and file all necessary stipulations to effectuate this covenant; Provided, that this covenant shall not be construed to deprive either party of any right in respect to said causes or the litigation therein in case this agreement be abandoned or terminated.

The company hereby agrees that it will, within forty-five (45) days from and after date hereof, and prior to the delivery of said deed and bill of sale, satisfy and obtain the discharge of all claims or demands against the city arising out of or by reason of the occupation by the company of any private property for right of way or other purposes near Westlake Avenue at the south approach to the old Stone Way Avenue bridge across Lake Union.

The parties hereby forever release and discharge each other from each and every claim, demand and right of action of whatsoever kind and description arising or accruing from the beginning of the world to the date of this agreement, excepting those claims, rights, demands, obligations, actions and judgment herein expressly mentioned; Provided that this general release shall be of no force or effect unless the property is transferred to the city pursuant hereto.

In the event that a suit or suits be brought in any court and in which the consummation of the purchase of said property, or the performance of any act necessary thereto, or the issuance and delivery of said bonds, be restrained, or in which restraint thereof be sought, then and in that event, the time for the delivery of said deed and bill of sale and the performance of any act or covenant required hereunder to be done or performed concurrently therewith, or within the forty-five (45) day limit herein provided for, shall be enlarged to and shall include forty-five (45) days from and after the entry of the first final judgment in such suit or suits, and in case of an appeal from any judgment in such suit or action, such time shall be enlarged to and shall include forty-five (45) days from and after the first final determination of legality of this agreement and the ordinances pertaining thereto, on such appeal, time to be computed from the date of filing the remittitur in the trial court; Provided, however, that in the event that the time of delivery of said deed and bill of sale be delayed beyond the first day of March, 1919, then and in that

199 event the company shall rebate and pay to the city, at the time of delivery of the utility bonds herein provided for, all interest that may have accrued thereon to said date, such payment to be made in gold coin of the United States of the present standard of weight and fineness.

It is mutually understood and agreed that a leaving or filing of said deed and bill of sale with the city, or any officer thereof, shall not constitute a delivery to the city of the same within the meaning of this agreement, if the company fails, neglects or refuses to do and perform any one of the covenants or acts by it required to be done or performed hereunder prior to the delivery of said deed and bill of sale or concurrently therewith; and that until all such covenants and acts have been done and performed, the delivery of said deed and bill of sale shall, within the meaning of this agreement, be considered incomplete.

If the company shall fail, neglect or refuse to "deliver" said deed and bill of sale to the city within the forty-five (45) day limit hereinbefore provided for, or if it shall fail, neglect or refuse to do or perform any covenant or act by it to be done or performed concurrently therewith or prior thereto, then and in that event the company shall forfeit to, and hereby agrees to pay, the city the sum of Four Hundred Dollars (\$400.00) per day as liquidated damages for each and every day such failure, neglect or refusal shall continue after the expiration of said forty-five (45) day limit, said liquidated damages to be paid daily at the close of each day; and the city may bring an action or successive actions for the recovery thereof; and the bringing of one or more actions shall not be a bar to further actions for recovery of liquidated damages accruing thereafter; and the city may, at its option, accept or collect said liquidated damages for a period of six (6) months following said forty-five (45) day limit and then terminate this agreement, or may, at its option, continue for a time after said period of six (6) months to accept or collect said liquidated damages and then terminate this agreement, or may terminate this agreement forthwith at any time after the expiration of said forty-five (45) days, upon the failure, neglect or refusal of the company, for a period of twenty-four (24) hours to pay said liquidated damages or any installment thereof. The payment of such sums as liquidated damages shall not excuse the company from making prompt payment of any and all other payments herein provided for; Provided that no liquidated damages shall accrue during any period of time that the company or city may be restrained or enjoined by order of court from consummating this agreement.

In case any of the property shall, prior to the delivery of said deed and bill of sale, be destroyed or damaged by fire or otherwise, such destruction or damage shall not excuse the performance of this agreement but the company shall at the time of the delivery of such deed and bill of sale or prior thereto replace or repair such property or pay the value thereof to the city, such value in case of disagreement to be determined by arbitration to be made in accordance with the laws of the State of Washington; Provided that this paragraph shall not be construed to excuse the company from specific delivery

or delivery in kind of all other personal property mentioned or referred to in said Exhibit "A".

Pending the consummation of this agreement the company shall maintain the property in as good condition and repair as the same was on the first day of October, 1918, and computing from said date, the company shall during the period transpiring until the transfer of the property to the city expend for ordinary replacement and repair a percentage of the gross receipts equal to the percentage of gross receipts so expended by the company during the five years next preceding the first day of January, 1918, or in lieu thereof the company shall pay to the city at the time of the delivery of said deed and bill of sale the difference between the sums actually so expended for said purpose subsequent to October 1, 1918, and the aggregate of the percentage of gross receipts herein required to be expended during said period.

This contract is made, and the property shall be conveyed subject to the existing trackage contracts, advertising contracts and other contracts made by the company in the ordinary course of its street railway business, a list of which contracts is on file in the office of the City Comptroller and ex-officio City Clerk of the City of Seattle, as part of said Exhibit "A" under General Item Number 1 of the inventory of property, and the city shall accept the conveyance subject to, and shall be entitled to the benefits of, such contracts.

Upon the delivery of said deed and bill of sale and the full and complete performances of all covenants and things to be done and performed by the company hereunder, the city shall and will deliver to the company the said Fifteen Million Dollars (\$15,000,000) in utility bonds.

It is hereby expressly agreed by and between the parties hereto that each and every act, covenant and thing required to be done by the company under the provisions of this contract and agreement, and the time within which the same shall be done, are each and all of the essence hereof, and if the company shall fail, neglect or refuse to do and perform any such act, covenant or thing in the manner and within the time herein specified, the city may thereupon demand and collect the liquidated damages hereinbefore provided for, and as hereinbefore provided for may terminate this contract and agreement.

In case this agreement, or any provision thereof, or in case the ordinance providing for the making of this agreement, or any provision thereof, or in case the ordinance providing for the issuance of the utility bonds to be issued in payment for the Property or any provision of said ordinance, be declared invalid by the courts on appeal, then upon the happening of such event or events, this agreement shall cease and terminate forthwith, unless said invalidity be corrected and validated by the passage of appropriate legislation at the 1919 session of the State legislature, or (in case it can be thus validated) by the passage of appropriate ordinances by the City Council of Seattle, within sixty (60) days after such decision by the courts on appeal.

The terms and provisions of this contract and agreement and the

obligations thereunder shall be binding upon the successors and assigns of the parties hereto.

In witness whereof, the parties hereto have caused this instrument to be executed in triplicate by their proper officers thereunto duly authorized and sealed with their respective corporate seals on the — day of —, 19—. The City of Seattle, By — —, Its Mayor. Attest: — —, City Comptroller and ex-Officio City Clerk. (Corporate Seal.) Puget Sound Traction, Light & Power Company, By — —, Its President. Attest: — —, Its Secretary. (Corporate Seal.)

Section 5. That for the purpose of operating the municipal street railway system of the City of Seattle subsequent to the acquisition of said additions and betterments and extensions, the City of Seattle shall, and hereby agrees to, purchase electric energy from the Puget Sound Traction, Light & Power Company upon the terms, and under the conditions, specified in the contract and agreement hereinafter in this section set forth, and the mayor and city comptroller and ex-officio city clerk be, and they are, hereby authorized and directed to execute, enter into, and deliver such contract and agreement with the Puget Sound Traction, Light & Power Company for the purchase of such electric energy, which said contract and agreement shall be in words and figures as follows, to-wit:

This Agreement, Made and entered into this — day of —, in the year one thousand nine hundred and —, by and between Puget Sound Traction, Light & Power Company, a corporation organized under the laws of the State of Massachusetts, party of the first part, hereinafter for convenience referred to as the Company, and The City of Seattle, a municipal corporation organized under the laws of the State of Washington, for convenience hereinafter referred to as the city, party of the second part, witnesseth:

Whereas, the company is engaged in the business of generating and distributing electric power and energy from certain hydro-electric and steam power plants within the State of Washington, and selling and disposing of said power and energy; and

Whereas, the city is engaged, or to be engaged in the operation of electric and cable street railways in the City of Seattle, in the State of Washington,

Now, therefore, In consideration of the premises and the mutual covenants and agreements therein specified to be kept and performed by the parties hereto, it is agreed as follows, to-wit:

(1) Commencing with the date that the city takes possession of those certain additions and betterments to, and extensions of, the existing municipal street railway system provided for, and to be acquired pursuant to Ordinance No. 39025, approved the 31st day of December, 1918, and consisting of the Seattle street railway system of the company, the company agrees to sell and furnish to the city at the points hereinafter specified, and the city agrees with the company to purchase, and take from, and to pay the company for, all electric power necessary or required for the operation of the City's municipal street railway system, and

for the operation of future extensions thereto, in the manner and for the use and under and subject to the terms and conditions herein-after set forth.

(2) It is agreed that it is the purpose and intent of this contract that the power furnished hereunder shall be used by the city to enable it to operate the Electric Railway and Cable Railway systems described in Section 1 hereof, including the small power incident to such operation, used at shops, car barns and yards, and to supply power customers now being supplied from railway feeders.

(3) With the exception of the company's Post Street substation, where the nominal voltage shall be 550 volts, direct current at a nominal voltage of 600 volts shall be delivered to the railway feeders of the city at the following substations of the company:

Georgetown Substation;
Spokane Avenue Substation;
West Seattle Substation;
Jefferson Street Substation;
James Street Substation;
North Seattle Substation;
University Substation;
Fremont Substation;
Ballard Substation.

Alternating current power at nominal sixty cycles, three phase, shall be delivered to the building terminals of the city's cable railway stations at the nominal voltages shown as follows:

James Street Cable Station, 2,300 volts;
Madison Street Cable Station, 2,300 volts;
Yesler Way Cable Station, 13,200 volts.

Alternating current power at nominal sixty cycles shall be delivered at shops, car barns and yards at the same number of phases and at the same nominal voltages as have heretofore been in use.

(4) Measurement of power shall be made by commercially accurate watt hour meters of approved manufacture to be furnished by and remain the property of the company. The company or its agents shall have at all times reasonable access to all parts of the city's premises where the company's electric energy is used, and may inspect, repair, remove and replace the company's property, complying therein with all laws of the State of Washington and the charter and ordinances of the city and the rules and regulations of its Board of Public Works and departments.

Either party shall have the right at any time, and from time to time, upon giving written notice of at least forty-eight (48) hours to the other party, to test said meters or any of them for correctness and any meter found to be incorrect shall forthwith be properly corrected or adjusted and proper allowance for the incorrectness of such meter shall be made to the party entitled thereto, but the allowance to be made on account of any test shall in no case be made for a longer period than thirty (30) days preceding the date of such test. In case either party fails to be represented at the

time and place designated for making a test of any meter in any notice given as aforesaid, such party shall be bound by the test at such time and place, and the meter found to be incorrect shall be subject to the corrections shown by such test to be needed, until a new test is made in accordance with those provisions. Service of notice upon the City shall be made by delivering the same to the superintendent of public utilities.

(5) The city agrees to pay the company each month for all electric power furnished and used, at the following rates:

For Direct Current Power at 550 Volts, One Cent (1c.) per K. W. H.

For Direct Current Power supplied by equipment owned by the city but operated by the company, 9 mills per K. W. H.

For Alternating Current Power for Cable Motors, 8 mills per K. W. H.

For Alternating Current Power at 13,200 Volt Bus of Company's substations, 7 mills per K. W. H.

Payment for power for which the city is obligated hereunder to pay in each calendar month, shall be made on the twenty-fifth of the next succeeding calendar month from the revenues derived from the Municipal Street Railway System. Bills for power shall be rendered within ten (10) days after the first of the month.

(6) It is agreed that this contract shall be and is hereby made for the term of three (3) years from the date hereof, for the full amount of power, and for lesser quantities thereafter as herein provided.

202 (7) At any time subsequent to March 1, 1922, the city may diminish and discontinue the taking of electric power under this contract by a block of approximately five thousand (5,000) kilowatts, provided the city shall have given the company one year's written notice of the city's intention so to do, and the obligation of the company to furnish such block of power to the city and the city to purchase from the company, shall cease at the expiration of one year from the date such notice is given; Provided, however, that if the city does not give the company one year's written notice of its intention to take over a block of power by March 1, 1922, the company shall continue to supply such power to the city under the terms of this contract until one year after such notice is given. Provided further, that the city shall not be entitled to diminish or discontinue the taking of such electric power unless at that time or theretofore the city shall make provision for purchasing, and purchase, a substation as hereinafter provided.

It is also the intention of this contract that beginning with the time when the city discontinues the aforesaid block of approximately five thousand (5,000) kilowatts of power, it may at intervals of not less than one year, upon one year's written notice, discontinue additional blocks of power of approximately five thousand (5,000) kilowatts each, until it shall have discontinued all taking of power hereunder. Provided that the city shall not be entitled to discontinue the taking of such blocks of power unless at the time of dis-

continuing of each of such blocks or before such discontinuance, the city shall make provision for purchasing, and purchase, a substation for each such successive block discontinued as hereinafter provided.

Upon discontinuing each successive block of power as described in the preceding paragraph, the obligation of the company to furnish to the city, and of the city to purchase from the company, such respective blocks of power, shall in each case cease. If, however, the city shall fail to discontinue any of the successive blocks of power at the time herein specified, the company shall continue to supply such power under the terms of this contract, until such time as the city shall discontinue the same; Provided, however, that in each case in which the city notifies the company as herein provided, of its intention to discontinue a block of power, the obligation of the company to furnish such power to the city shall cease at the expiration of one year after such notice is given. In no case shall the city discontinue more than five thousand (5,000) kilowatts of the power herein contracted for during any one year.

The company reserves the right to discontinue the power in blocks of approximately five thousand (5,000) kilowatts per annum, by giving five (5) years' written notice at any time subsequent to three (3) years after the date of this contract for each block of five thousand (5,000) kilowatts, but in such event the city shall be under no obligation whatsoever to purchase substations.

(8) It is further agreed that each time the city discontinues and the company ceases to furnish a block of power at the instance of the city as provided in Section VII hereof, as a prerequisite to the right and option of the city to so discontinue, the city shall also take over and purchase from the company and pay the company for, one or more of the company's substations as listed in this section, including the land, buildings and railway power supply equipment therein, insofar as it belongs to the company, and the substation or substations to be so taken over shall be selected by the city. The combined railway load of the substations so taken each time shall be approximately five thousand (5,000) kilowatts, and when so taken the obligation of the company to furnish the city and of the city to purchase from the company power for supplying such substation shall cease.

Equipment in each of the substations taken over by the city, used by the company exclusively for light and power purposes other than Railway, is to remain the property of the company and will be removed by the company prior to the transfer of each substation to the city.

The prices to be paid by the city to the company for each of the substations purchased by the city as provided in this section, shall be determined by a board of three engineers who shall appraise each substation as of the date it is to be purchased by the city, and fix its value on the basis of its reproduction cost less depreciation, having due regard to obsolescence, and the value so fixed shall be the price to be paid by the city to the company for such substation.

The selection of the board of engineers as herein provided for shall

be made in the same manner as provided in Section XII hereof for the selection of arbitrators.

The substations of the company from which selections are to be made by the city for the purchase by the city as herein provided are the following:

Spokane Avenue Substation;
West Seattle Substation;
James Street Substation;
203 North Seattle Substation;
University Substation;
Fremont Substation;
Ballard Substation.

(9) The company represents that it is supplying direct current power at a nominal voltage of 600 volts to the Western Washington Power Company for the operation of its electric railway in the City of Seattle and for distribution of said Western Washington Power Company to Pacific Northwest Traction Company for the operation of electric railways outside of the city limits of the City of Seattle.

It is agreed that in the event the city should take over the Ballard substation of the company as provided in Section VIII of this contract before the Western Washington Power Company and Pacific Northwest Traction Company have made other arrangements for direct current power, the city shall furnish to the railway feeders of the Western Washington Power Company at Ballard substation such amounts of direct current power of a nominal voltage of 600 volts as the Western Washington Power Company may require for its own uses and for the uses of the Pacific Northwest Traction Company up to 1,000 kilowatts, until the Western Washington Power Company and Pacific Northwest Traction Company shall make other arrangements for obtaining said direct current power, but not for a longer time than the term of this contract.

The company agrees to pay the city monthly, on presentation of bill therefor, for all power so furnished by the city to the railway feeders of Western Washington Power Company, at the rate of one cent (1c.) per kilowatt hour.

(10) If the company, by reason of any unavoidable cause or accident, or because of strikes, floods, fires, or destruction of property, shall be unable at any time during the period of this contract, to make delivery of the power as herein agreed, then the company shall not be liable for any sum for such failure so caused to deliver power during said periods.

(11) The company agrees to save and keep the city harmless from any loss or liability under or by reason of any claim for injury to persons or to property occasioned by the power up to the specified point of delivery thereof by the company to the city as fixed herein; except as to such injuries as may result from negligence of the city or any of its servants, agents or employees, and conversely the city agrees to save and keep the company harmless for any and all loss or liability under or by reason of any claim for injury to persons or

property occasioned by the power or energy beyond the point of delivery thereof as aforesaid, except as to such injuries as may result from defective equipment of the company or negligence of the company or any of its servants, agents or employees.

(12) Any and all questions which shall and may arise touching this agreement, or the construction or performance of any provisions thereof, shall be submitted to the decision of three disinterested persons, to be chosen as follows:

The company shall select one, and the city shall select one, and the two thus chosen shall select a third, and the persons thus chosen after a full hearing reported to both parties and full examination of the matter in dispute, shall, within ninety (90) days after the final submission, determine the same in writing, and the decision of the majority of the three persons thus chosen shall be final. If either party shall neglect or refuse to appoint an arbitrator on its own part within ten days after receiving written notice from the other of its appointment of an arbitrator on its part, the arbitrator so appointed by the party giving such notice may select a disinterested person to act as an arbitrator for and on account of the party so notified and refusing or neglecting to appoint an arbitrator on its part, and the two thus chosen shall select a third. If the two so chosen by either of the methods above provided shall be unable to agree upon a third arbitrator, or shall fail to agree upon a third arbitrator and such neglect shall continue for a period of fifteen days, then and in that event the parties hereto shall and may notify the Chief Justice of the Supreme Court of the State of Washington of such fact, and he may appoint said third arbitrator. The decision and award of the arbitrators as herein provided, or any two of them, shall be binding and conclusive upon the parties hereto with respect to the matters so submitted to, and decided by, said arbitrators. If any arbitrator appointed by either of the parties hereto shall neglect or fail to act, notice of such failure shall be served upon the party appointing said arbitrator by the other party, and in case such party shall fail to appoint another arbitrator or shall fail to cause the arbitrator first appointed to act, and such failure shall continue for a period of ten days, then the arbitrator appointed by the other party may select a disinterested person to act as an arbitrator for and on account of the other party, and the two thus chosen shall select a third, and the decision and award of such arbitrators or any two of them shall be binding and conclusive upon said parties hereto with respect to the matters so submitted and decided by said arbitrators.

204 The award and decision of the arbitrators under the provisions hereof shall be served by them, or some one of them, upon the parties hereto within ten (10) days after the time when such arbitrators shall make their award.

It is further mutually agreed that any difference which may arise as to the construction of, or transaction of any business under, this agreement by the parties hereto shall not interrupt the transaction of such business or the operation thereof or the delivery of power, but all said business, including payment of bills and accounts of either party hereto and the delivery of power hereunder, shall con-

continue in the same manner in which the same shall have been transacted prior to the arising of such difference, until the matter of difference shall have been fully determined by the arbitrators as aforesaid, and thereupon such payments or restoration shall be made by the respective parties to the other as may be required by the decision or award of such arbitrators.

(13) It is mutually understood and agreed by and between the parties hereto that the provisions of this contract shall not in any event be binding upon the city unless the street railway system of the company is acquired by the city, as an addition and betterment to, and extension of, the city's municipal street railway system; nor, in the event that the city, after such acquisition, should cease to operate such addition, betterment and extension, or any substantial portion thereof, shall the provisions of this contract be binding upon the city after the date upon which such operation shall cease, except as to the payment for power theretofore furnished.

(14) This contract and all its terms and provisions shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

In witness whereof, the parties hereto have caused this contract to be duly executed by their respective corporate officers thereunto duly authorized so to do, and attested by their respective corporate seals the day and year first above written. Puget Sound Traction, Light & Power Company, by ———, Its President. Attest: ———, Its Secretary. (Corporate Seal.) The City of Seattle, by ———, Its Mayor. Attest: ———, City Comptroller and ex-Officio City Clerk. (Corporate Seal.)

Section 6. That from and after the delivery of said warranty deed and bill of sale, and in order to effectuate the transfer to the City of Seattle of said street railway system, property and equipment, the superintendent of public utilities be, and he is, hereby authorized and directed, for and on behalf of the City of Seattle, to accept delivery of said street railway system, property and equipment, and to enter into the possession of each and every part thereof, and thereafter to do and perform all acts and things necessary and convenient to carry out and effectuate the intent and purpose of this ordinance.

(To be used for all ordinances except emergency.)

Section 7. This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the city charter.

Passed the City Council the 31st day of December, 1918 and signed by me in open session in authentication of its passage this 31st day of December, 1918. T. H. Bolton, President of the City Council.

205-323 Approved by me this 8th day of January, 1919. Ole Hanson, Mayor.

Filed by me this 8th day of January, 1919. Attest: H. W. Carroll, City Comptroller and ex-Officio City Clerk, by ———, Deputy Clerk. (Seal.)

Published ———, ———, ———, City Comptroller and ex-Officio City Clerk, by ———, Deputy Clerk.

* * * * *

324

Plaintiff's Exhibit B.

[Filed June 7, 1920.]

139,815.

This indenture made this 31st day of March, 1919, between Puget Sound Traction, Light and Power Company, a corporation created and existing under the laws of the State of Massachusetts, and authorized to do business in the State of Washington, hereinafter called the "company," and the City of Seattle, a municipal corporation created and existing under the laws of the state of Washington, hereinafter called the "City," witnesseth:

The Company in consideration of the utility bonds of the city of the par value of fifteen million (\$15,000,000.00) Dollars bearing interest at the rate of five (5) per cent per annum, payable semi-annually, authorized by Ordinance No. 39025 passed by the City Council on the 31st day of December, 1918, approved by the Mayor on the 31st day of December, 1918, and duly published, delivered by the City to the Company in payment for the property hereinafter described, has sold, transferred and delivered and by these presents does hereby sell, transfer and deliver and has granted, bargained, sold conveyed and confirmed, and by these presents does hereby grant, bargain, sell, convey and confirm unto the City of Seattle, its successors and assigns, the following described street railway property of the Puget Sound Traction Light & Power Company located in the City of Seattle, County of King, State of Washington, and hereinafter more fully described as follows, to-wit:

All of its street railway system, including street railways and street railway tracks, cables and cable lines, terminals spurs, switches, crossovers, turntables and wyes, located in, on or upon public streets, alleys or other public places or public property or upon private rights of way or private property; all bridges, trestles and viaducts and approaches thereto; all rolling stock, cars and street railway machinery; appliances and equipment, of
 325 whatsoever kind or description; all automobiles, trucks, motorcycles, track grinders, track welders and wagons used in connection with the operation and maintenance of said street railway system; all trolley wires, span wires and railway power feeders up to the point of their entry into substations; all poles used exclusively for street railway purposes, and such interest in all other poles used in connection therewith as may be necessary or conve-

nient in the operation of said street railway system; all wires, cables, insulators, switchboards, instruments, telephones and telephone booths used in connection with the street railway train dispatching system; all signal systems and safety devices and interlocking apparatus; all car houses, car barns, store houses, shops and yards, and all car house equipment, cable machinery, tools, supplies and stocks located therein; all waiting stations, platforms, sheds, small buildings, benches, sand boxes, freight sheds, depots and warehouses, gravel pits and bunkers; all tools and equipment, engineering instruments and instruction apparatus used in connection with said street railway system; all maps, drawings, operating records and valuation reports, all compilations, statistics, efficiency systems and reports and research work relating to said street railway system; all office equipment, cash registers, money counting machines, adding machines, office fixtures, furniture and printed forms of all kinds and descriptions used exclusively in connection with said street railway system; all real estate used, or useful in connection with said street railway system, described as follows, to-wit:

(1) The south sixteen (16) feet of Lot 21, and all of Lots 22, 30, 31, 32 and 33 in Block 4; and the south sixteen (16) feet of Lot 21, and all of Lot 2, in Block 5, of Wassom's Addition to Ravenna Park.

326 (2) The north thirty (30) feet of Tract 3 of Dorffel's Supplemental to Wassom's Addition to Ravenna Park.

(3) The North thirty (30) feet of Lots 1, 2, 3, and 4, in Block 16 of Ravenna Springs Park Supplemental Addition to the City of Seattle, except portions of Lots 3 and 4 deeded to the City of Seattle, together with the north thirty (30) feet of that part of Twenty-fifth Avenue Northeast vacated by Ordinance No. 27551.

(4) A right of way twenty four (24) feet in width, extending through Ravenna Park from the west line of Ravenna Springs Park Supplemental Addition to the east line of Ravenna Avenue, as recorded in Volume 440 of Deeds, page 204, in the records of King County, Washington.

(5) A right of way twenty (20) feet in width adjoining Ravenna Park, extending from the north line of East Fifty-fourth Street to the south line of East Fifty-Sixth Street; also thirty (30) feet in width adjoining Ravenna Park, extending from the south line of East Fifty-sixth Street to the east line of Fifteenth Avenue Northeast, as recorded in Volume 212 of Deeds, page 242, and Volume of deeds 573, page 337, in the records of King County, Washington.

(6) A right of way forty (40) feet in width crossing the property of the Puget Mill Company, in the southwest quarter (S. W. $\frac{1}{4}$) of the southwest quarter (S. W. $\frac{1}{4}$) of Section 13, Township 24 North, Range 3 East, as recorded in Volume 548 of Deeds, page 569, in the records of King County, Washington.

327 (7) A right of way thirty-seven (37) feet in width across Island No. 1 in Section 18, Township 24 North, Range 4 East, as recorded in Volume 496 of Deeds, page 577, and

Volume 650 of Deeds, page 396, in the records of King County, Washington.

(8) An irregular tract of land located at the northeast corner of West Spokane Street and Alki Avenue, as described in Volume 543 of Deeds page 491, in the records of King County, Washington less portion condemned by the City of Seattle, under ordinance No. 29062.

(9) An irregular strip of land located in Block 44 of Denny-Fuhrman's Addition to the City of Seattle, as described in the following records of King County, Washington.

Volume 460 of Deeds, page 321.

Volume 403 of Deeds, page 588.

Volume 410 of Deeds, page 361.

Volume 821 of Deeds, page 398.

Volume 832 of Deeds, page 118.

Volume 841 of Deeds, page 8.

(10) A right of way thirty (30) feet in width across Block 18 of Porterfield's Addition to the City of Seattle, as described in Volume 231 of Deeds, page 539, of the records of King County, Washington.

(11) A right of way thirty (30) feet in width across Block 4 of Smith & Burn's Addition to the City of Seattle, as described in Volume 231 of Deeds, page 539, of the records of King County, Washington.

(12) All of Lots 1, 2, 3, 4, 5, and 6, Block 7, of Craven's Division of Green Lake Addition to the City of Seattle, less a thirty (30) foot right of way deeded to the City of Seattle.

(13) A right of way thirty (30) feet in width extending in a southerly direction across lot 2, Section 6, Township 25 north Range 4 East, from West Greenlake Way and Ashworth Avenue to 328 Woodland Park Avenue, and occupied by a single track, the center line of which is ten (10) feet north of the southerly line of said right of way.

(14) Lots 1 to 11, inclusive, excluding the east 25 feet of lot 7, Block 41, and Lots 1 to 10 inclusive, Block 42, and all vacated portions of alley between Blocks 41 and 42, Denny and Hoyt's Addition to the City of Seattle.

(15) All of those portions of Lots H and I, Queen Addition Supplemental to the City of Seattle and all that portion of a tract of land known as the Ada Blackwell tract, lying east of the right of way of the Oregon-Washington Railway and Navigation Company; save and except the Puget Sound Traction, Light & Power Company reserves perpetual and uninterrupted use of the southerly track entering this property from Duwamish Avenue, from point of entrance to right of way of Oregon-Washington Railway and Navigation Company, and reserves also perpetual and uninterrupted use of the track branching therefrom and extending out into the filled-in bed of the Duwamish River, for the purpose in each case of moving cars and freight from Duwamish Avenue, to and from Georgetown Power

Station of the said Company; provided, however, the City of Seattle shall have the right to move said tracks to any location within one hundred feet south of the present tracks.

(16) Lots 18 and 20 of the Replat of Block 14, of Woodlawn Addition to Greenlake.

(17) Lots 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32 of Block 7 of Squire Park Addition to the City of Seattle.

329 (18) Lots 7 and 8, in Block 47, and the North twenty (20) feet of Lot 1, in Block 48, as shown in the official maps of Lake Washington Shore Lands; also that portion of East Spring Street vacated between said blocks.

The North twenty (20) feet of Lot 3, Block 13, of Cascade Addition to the City of Seattle.

Portions of Lots 7 and 8 in Block 14, of McKenzie's & Dempsey's Lake Washington Addition to the City of Seattle, as described in a deed recorded in Volume 683 of Deeds, at page 106 of the records of King County, Washington; also that portion of East Spring Street vacated between the above described portions of said Cascade Addition and McKenzie & Dempsey's Lake Washington Addition.

(19) An unplatted tract of land described as follows: Beginning at the southwest corner of Block 4 of Miles Addition to the City of Seattle; thence north along the west line of said Block 4 of Miles Addition 145.49 feet to the southerly marginal line of East Madison Street; and the northwest corner of said Block 4, thence southwesterly along said southerly marginal line of East Madison Street 209.7 feet to the east marginal line of 10th Avenue; thence south along the east marginal line of 10th Avenue 34.45 feet to the north marginal line of East Spring Street; thence east along said north line of East Spring Street 178 feet to place of beginning, as recorded in Volume 742 of Deeds, at page 231, in the records of King County, Washington.

(20) A tract of land described as follows: Beginning at the northwest corner of Block 53, Yesler's Third Addition to the City of Seattle; thence south along the west line of said Block 66 feet; thence parallel with the north line of said block 306 feet; thence 330 southerly 99 feet; thence east 104.24 feet to Government Meander line; thence north 14 Deg. 17 Min. 02 Sec. east 70.62 feet; thence north 22 Deg. 32' 02" east 104.60 feet; thence west 463.76 feet to place of beginning. Also the north 165 feet of Block 52 as shown in the official maps of Lake Washington Shore Lands, except the easterly portion of the said North 165 feet of Block 52, Lake Washington Shore Lands as described in that certain condemnation judgment in cause No. 97479 in the Superior Court of the State of Washington for King County entitled Port of Seattle, a municipal corporation, plaintiff, versus Puget Sound Traction, Light & Power Company, et al., Defendants, which decree was signed and filed in said cause the 13th day of February, 1914.

(21) Lot 1 and the south 10 feet of Lot 2, Block 6 of Eastern Addition to the City of Seattle.

(22) Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 in Block

63, and Lots 1, 2, 3, 4, 5, 6, 10, 11, 12, 13, 14, and the north forty-five (45) feet of Lot 9 in Block 64 of D. T. Denny's Home Addition to the City of Seattle.

(23) Lot 2 (less part deeded to the N. P. R. R.) and Lots 3 and 4 in Block 2 of Ross Addition to the City of Seattle.

(24) Lots 20 and 21 in Block 167 of Gilman Park Addition to the City of Seattle.

(25) A tract of land in Government Lot 2, Section 6, Township 25 North Range 4 East, W. M. described as follows: Beginning at the intersection of the north line of Winona Avenue as platted in Hillman's Lake Front Division No. 1, produced northeasterly, and the east line of Woodland Park Avenue; thence northeasterly along the said north line of Winona Avenue produced a distance of 1535.4 feet more or less to the west line of Ashworth Avenue; thence north along the west line of Ashworth Avenue 118 feet more or less to a point of intersection with a line drawn parallel to and distant 239 feet
331 from the north line of North Seventy-seventh Street, as established by Ordinance No. 31199 thence west along said parallel line a distance of 298 feet more or less to the west line of the east one-half of the northeast quarter of said section 6; thence south along said west line 133 feet more or less to the south line of the north one-half of the southwest quarter of the northeast quarter of said section 6; thence west along said south line 945 feet more or less to the east line of Woodland Park Avenue; thence south along said east line of Woodland Park Avenue 793 feet more or less to the point of beginning; excluding therefrom North Seventy-seventh Street as established by Ordinance No. 31199, containing ten (10) acres, more or less.

(26) Lots 15 and 16 in Block 1 of Holbrooks & Clark's Addition to the City of Seattle.

(27) Lots 7 and 16 in Block 332 of Seattle Tide Lands.

(28) Lots 1 to 24 inclusive in Block 13; Lots 1 to 10 inclusive in Block "C"; Lots 1 to 14 inclusive in Block "D" except portions of Lots 1 to 7 inclusive in Block "D," deeded to King County, as recorded in Volume 1027 of Deeds at page 66, in the records of King County; all the above lots being in McGilvra's Third Addition to the City of Seattle.

Also lots 1 to 24 inclusive of Block 27 as shown on the official maps of Lake Washington Shore Lands.

(29) Lots 4, 5, 56, 57, 58 and 59 in Block 78; the south 27 feet of that portion of Lots 49, 50 and 51 and all that portion of Lots 1, 2, and 3, in Block 79, lying north of the section line between sections 11 and 14, Township 25 North Range 3 East, all the above in Gilman's Addition to the City of Seattle.

(30) The eastern portion of Lake Dell Tract No. 16, described as follows: Beginning on the north line of said tract sixteen (16) at a point sixty (60) feet west of the northeast corner of said tract; thence east along the north line of said tract, sixty (60) feet to the northeast corner of said tract; thence south along the east line
332 two hundred ninety (290) feet; thence in a northwesterly direction to the north line of said tract at the point of begin-

ning, less portion condemned by the City of Seattle under Ordinance No. 30673.

(31) An irregular tract of land being a portion of Lot Five (5) Block One (1) Porterfield's Addition to the City of Seattle, as recorded in Volume 145 of Deeds, page 148, of the records of King County, Washington, less portion condemned by the City of Seattle.

(32) Lots 3 and 4, Block 18, First Plat of West Seattle, by West Seattle Land & Improvement Company.

(33) A portion of the so-called Winter's Tract on Section Nine (9) Township Twenty-four (24) North, range Four (4) East, described in a deed recorded in Volume 818 of Deeds, at page 462, in the records of King County, Washington, less that portion condemned by the City of Seattle under Ordinance No. 30935.

(34) Lots 7 and 8 Block A, City Gardens Addition to the City of Seattle.

(35) Lots 11 to 14 inclusive, Block 21, T. Hanford's Addition to South Seattle.

(36) Lots 2 and 11, Block 32, T. Hanford's Addition to the City of Seattle.

(37) The South thirty (30) feet of Lots 14, 15, 16, 17, 18, 19, and 20, Block 19, Hillman City Division No. 2.

(38) Lot 1, Block 14, Hillman City Addition to the City of Seattle, Division No. 6.

(39) Lots 12 and 13, Block 8, H. E. Holmes Addition to the City of Seattle.

(40) The Southeasterly half of Lot 10, all of lots 11, 12, 13, and 14, and the westerly Twenty (20) feet of Lot 15, Block 101, as shown on the official maps of Lake Union Shore Lands.

333 (41) Lots 5 and 6, Block 10, McKenzie and Dempsey's Lake Washington Addition.

(42) Lot 1 Block 5; Lots 1 and 2, Block 6 (less the south thirty (30) feet condemned by the City) and Lots 13 and 14, Block 6, Rainier Valley Addition to the City of Seattle.

(43) Lots 1 and 2, (Less part condemned by City) Block 1, Rainer Valley Addition to the City of Seattle.

(44) The South fifty (50) feet of the west one-half of Tract No. 6, Sturtevant's Rainier Beach Acre Tracts.

(45) Lots 2, 3, 4, 5, and 6, Block 16, Walker's Addition to the City of Seattle.

(46) A portion of the so-called Marucca Tract in Section Nine (9) Township Twenty-four (24) North, Range Four (4) East as described in Volume 815 of Deeds, page 631, of the records of King County, Washington.

(47) An irregular tract of land particularly described as follows: Beginning at a point 685.74 feet west of and 8.4 feet south of, the quarter section corner between sections 28 and 33, in Township 25 North Range 4 East, which said point is on the south line of Madison Street, in the City of Seattle; running thence south 189.6 feet; thence west 305.2 feet to the intersection with the south line of said Madison Street; thence along the south line of said street North 58 Deg. 9' East, 359.3 feet to the place of beginning.

(48) A strip of land 12 feet in width located in the Hanford Donation Land Claim in Township 24 North, Range 4 East and described in a deed recorded in Volume 697 of Deeds, at 334 page 558, in the records of King County, State of Washington.

Also any and all real and personal property, or interest, therein, not hereinbefore enumerated, or described, now owned, held, used or occupied by said Company exclusively for local street railway purposes, excepting substations and the land upon which the same are located, and excepting money and choses in action.

All of the real and personal property and interest therein, described in Ordinance No. 39025 and mentioned and referred to in Ordinance 39069, is more fully and specifically described in the inventory filed in the office of the City Comptroller of the City of Seattle on the 30th day of December, 1918 bearing Comptroller's file No. 72055, and in the duplicate of such inventory marked Exhibit "A," and attached to and made a part of that certain contract executed by the City and the Company on the 10th day of February, 1919, pursuant to Ordinance No. 39069, which contract and exhibit are of record in the office of the Auditor of King County, State of Washington, at page One in Volume 1053 of Deeds, and certain errors in the descriptions therein are hereby corrected and the true and correct description of the property conveyed and intended by such ordinances, contract and exhibit to be conveyed is hereinbefore set forth.

It is specifically agreed, without limiting the generality of the foregoing language, that the following described property is not now owned, held, used or occupied by the Company exclusively for local street railway purposes, to-wit:

335 Lots 3, 4, 5, 6, 7 and 8, in Block 3, as shown upon the plat of an addition to the Town (now city) of Seattle, as laid off by the heirs of Sarah A. Bell, deceased.

Lot 6, in Block 60 in the Heirs of Sarah A. Bell's Second Addition to the town (now city) of Seattle less seven (7) feet condemned by the City of Seattle for the widening of Stewart Street.

Lot 8 in Block 1 of Boston Heights Supplemental Addition to the City of Seattle.

Lots 1, 2, 3, and 57 in Block 35 of Brooklyn Addition to the City of Seattle.

Lots 1, 2, 3, 4, 5, 6, 7, and 8 in Block 15; and Lots 1 and 2, in Block 16 of Cascade Addition to the City of Seattle.

Lots 21, 22, 23, 24 and 25 in Block 1, of Davis Addition to the City of Seattle.

Lot 4 in Block 103 of D. T. Denny's First Addition to the City of Seattle.

Lots 7 and 8, and the south fifteen (15) feet of Lot 9 in Block 64 of D. T. Denny's Home Addition to the City of Seattle.

Lots 1, 4, and 5, and the north thirty (30) feet of Lot 8 in Block "E" of a plat of an addition to the town (now city) of Seattle, laid off by A. A. Denny.

Lots 16, 17, 18 and 19, in Block 27 of Denny & Hoyt's Addition to the City of Seattle.

Lots 12 and 13 in Block 3 of Dodge and Dodge Addition to the City of Seattle.

Tract 11, of Duwamish Industrial Addition to the City of Seattle.

The North fifty (50) feet of Lot 2 in Block 6 of Eastern Addition to the town (now city) of Seattle.

Tract 15; also the south forty (40) feet of Tract 38 of Frye's Addition to Columbia.

Lots 3 and 4 in Block 167 of Gilman Park Addition to the City of Seattle.

Lots 11, 12, 13, 14, 17, 18 and 19 in Block 1, of Holbrook and Clark's Addition to West Seattle.

Twelve (12) foot strip adjoining on the east side of Cedar River pipe line right of way, (now Beacon Avenue) through lots 1, 2, and 3, in Block 51, and Lots 5, 6, and 7 in Block 52 of T. Hanford's Addition to the City of Seattle.

Lot 20 in Block 23 of Madison Street Addition to the City of Seattle.

336 Lots 11 and 15 in Block 9 of Madison Park Addition to the City of Seattle.

Lot 10 in Block 2 of Mountain View Addition to the City of Seattle.

Lots 4, 5, 11 and 12 in Block 2, of Portage Addition to the City of Seattle.

Lots A, B, C, D, E, F, G, H, and I of Queen Addition Supplemental to the City of Seattle, except that portion of Lots H and I lying east of the east boundary line of the sixty (60) feet right of way conveyed to the Oregon and Washington Railroad Company.

Lot 8 in Block 8, Queen Addition to the City of Seattle.

The West half of Lot 8 in Block 8 (Less that portion condemned by the City of Seattle for Beacon Avenue); also Lots 1, 2, 3, and 4, in Block 9, of Riverside Addition to the City of Seattle.

Lots 13, 14, 15, and 16 in Block 25 of Robeson's Replat of the south half of Block 25 of Madison Street Addition to the City of Seattle.

Lots 1, 2, and 3 in Block 10 of Renton Hill, an addition to the City of Seattle.

Lots 1, 2, 3, and 4, in Block 10, of Sander's Supplemental Plat.

Lots 8, 9, 10, 11, 12, 13, 14 and 15 in Block 332; also Lots 3 and 4, in Block 177, less right of way of the Northern Pacific Railway, of Seattle Tide Lands according to the official plat thereof.

Also all that portion of Lot 8 in Block 178 of Seattle Tide Lands according to the official plat thereof, lying immediately west of and adjacent to the northerly 30 feet of Lot 8 in Block "E" of a plat of an addition to the town (now city) of Seattle laid off by A. A. Denny.

Lots 2 and 3, in Block 44 of C. C. Terry's First Addition to the town (now City) of Seattle.

All plats of the additions as are heretofore mentioned being on file in the office of the Auditor of King County, Washington.

All that certain portion of the filled in bed of the Duwamish River lying between East Marginal Way and the southeasterly boundary line of the Ada Blackwell tract, hereinafter referred to and more particularly described in that certain deed from
 337 Commercial Waterway District No. 1 to Puget Sound Traction, Light & Power Company, recorded in Volume 1025 of Deeds at Page 504 thereof, of the records of King County, Washington.

All that portion of what is known as the Ada Blackwell tract lying west of the west boundary line of the sixty (60) feet right of way conveyed to the Oregon and Washington Railroad Company the boundaries of which said tract are more particularly described as follows, to-wit:

Commencing at a point three hundred seventy-six and thirty-one hundredths (376.31) feet south of and two hundred eighty-two and one tenth (282.1) feet west of a point on the east line of the Luther M. Collins Donation Claim No. 46 in Section- sixteen (16), Seventeen (17), twenty (20), Twenty-one (21), twenty-eight (28) and twenty-nine (29) of Township twenty-four (24) north, Range four (4) East of the Willamette Meridian, King County, Washington, where said line intersects the northwest corner of the S. A. Maple Donation Claim; and running thence south fifty-four degrees and thirty minutes west (s. 54 Deg. 30' w.) a distance of four and forty-two one hundredths (4.42) chains and to the bank of the Duwamish River; thence north fifty-three degrees and thirty minutes west (N. 53 Deg. 30' W.) four and fifty-nine one hundredths (4.59) chains; Thence north seventy-one degrees and thirty minutes west (N. 71 Deg. 30' W.) five hundred seventy-five one thousandths (.575) chains to the true point of beginning; thence north seventy-one degrees and thirty minutes west (N. 71 Deg. 30' W.) four and four hundred thirty-five thousandths (4.435) chains; thence north ten degrees east (N. 10 Deg. E.) eight and eighteen one hundredths (8.18) chains; thence north fifty one degrees east (N. 51 Deg. E.) one hundred seven and twenty-nine one hundredths (107.29) feet to the southwest line of Rainier Avenue (formerly known as the "County Road" or Valley Street);
 338 thence south thirty-nine degrees east (S. 39 Deg. E.) along the southwest line of said Rainier Avenue six hundred one and two one hundredths (601.02) feet; thence south fifty-one degrees west (S. 51 Deg. W.) three hundred fifty seven and forty four one hundredths (357.44) feet, to said true point of beginning, containing five (5) acres of land, more or less.

All of Government Lot Two (2) in Section six (6), Township twenty-five (25) North, Range four (4) East of the Willamette Meridian; excepting therefrom the fifteen acres in the northwest corner thereof, described as follows, to-wit:

Commencing at the northwest corner of said Lot Two (2) and

running thence east along the north line thereof sixty (60) rods; thence south parallel with the west line of said lot Two (2) forty (40) rods; thence west parallel with said north line sixty (60) rods, to the said west line; thence north along said west line forty (40) rods to said northwest corner and point of commencement; excepting also the nine and ninety-five one hundredths (9.95) acres conveyed to the City of Seattle for Park purposes, by deed dated July 18th, 1907; excepting also that portion of said lot Two (2) acquired by the City of Seattle for the opening, establishing and widening of North and East 80th Street, Ashworth Avenue, Woodland Park Avenue and North 77th Street; excepting also a right of way thirty (30) feet in width extending in a southwesterly direction across said Lot Two (2) from West Green Lake Way and Ashworth Avenue to Woodland Park Avenue and occupied by a single track, the center line of which is ten (10) feet north of the southerly line of said right of way; excepting also the following described tract: Beginning at the intersection of the north line of Winona Avenue as platted in Hillman's Lake Front Division No. 1, produced northeasterly and the east line of Woodland Park Avenue; thence northeasterly along

the said North line of Winona Avenue produced a distance of 339 one thousand five hundred thirty-five and four tenths (1535.4) feet more or less to the west line of Ashworth Avenue; thence north along the west line of Ashworth Avenue one hundred eighteen (118) feet more or less to a point of intersection with a line drawn parallel to and distant two hundred thirty-nine (239) feet from the north line of North Seventy-seventh Street, as established by Ordinance No. 31199; thence west along said parallel line a distance of two hundred ninety-eight (298) feet more or less to the west line of the east one-half of the Northeast quarter of the southwest Quarter of the Northeast quarter of said Section 6; thence south along said west line one hundred thirty-three (133) feet more or less to the south line of the north one-half of the southwest quarter of the northeast quarter of said section 6; thence west along said south line nine hundred forty-five (945) feet more or less to the east line of Woodland Park Avenue; thence south along said east line of Woodland Park Avenue seven hundred ninety-three (793) feet more or less to the point of beginning, excluding therefrom as aforesaid, North seventy-seventh Street as established by Ordinance No. 31199, containing ten (10) acres, more or less.

That certain parcel of land situated in the City of Seattle, King County, Washington, described as follows:

Beginning at a point on the east margin of Western Avenue 100 feet northerly from the intersection of said east margin of Western Avenue and the north margin of Yesler Way; thence north 0 Deg. 7' 41" east along the east margin of Western Avenue a distance of 37,366 feet; thence north 31 Deg. 45' 10" west along the east margin of Western Avenue a distance of 134.897 feet; thence north 58 Deg. 14' 50" east along a line 15 feet northerly from and parallel to the southerly boundary line of Lot 2 of Block 195, Seattle Tide Lands according to the official plat thereof, a distance of 95.977 feet to the

340 westerly margin of Post Street; thence south 31 Deg. 45' 10" east along said westerly margin of Post Street a distance of 162.312 feet; thence south 0 Deg. 7' 41" west continuing along the westerly margin of Post Street a distance of 64.752 feet to a point 100 feet northerly from the intersection of said westerly margin of Post Street with the said northerly margin of Yesler Way; thence north 89 Deg. 53' 30" west a distance of 96 feet to the point of beginning; which property is that on which is located what is known as the Post Street Steam Station, and which tract of land is more particularly described in those certain deeds recorded respectively in Volume 251 of Deeds, page 246, Volume 250 of Deeds page 406, Volume 276 of Deeds, page 199 and in Volume 276 of Deeds page 197, of the records of King County, Washington.

And the company pursuant to such ordinance and contract does hereby surrender unto the City of Seattle each and every street railway franchise and street railway permit by virtue of which the Company operates the property mentioned in Ordinance No. 39025 and Ordinance No. 39069, both of the City of Seattle, or any part of such property, whether such street railway franchises or street railway permits were granted by the City of Seattle or by other municipalities now a part of the City, together with all rights under each and every such street railway franchise and street railway permit, including all street railway franchises and street railway permits granted to the company and predecessors of the Company by King County, pursuant to which the Company operates any part of the property described in said Ordinances and contract, or either of them,

341 within the corporate limits of the City.

And the Company does hereby quitclaim and forever release and transfer to the City, its successors and assigns, all such street railway franchises and street railway permits granted the company and any predecessors of the Company by King County, pursuant to which the Company operates any part of the property described in such contract and in Ordinance No. 39025 of the City of Seattle within the corporate limits of the City.

Together with all and singular the rights, tenements, hereditaments and appurtenances unto the premises belonging or in any wise incident or appertaining.

To have and to hold the said premises with the appurtenances thereunto belonging and the said personal property unto the City, its successors and assigns, forever, subject to the existing trackage contracts, advertising contracts and other contracts made by the Company in the ordinary course of its street railway business, a list of which contracts is on file in the office of the City Comptroller and ex-officio City Clerk of the City of Seattle as a part of Exhibit "A", under general item No. 1 of the inventory of property, such exhibit being a duplicate of Exhibit "A" attached to that certain contract hereinbefore mentioned, executed the 10th day of February, 1919 and recorded in the office of the Auditor of King County, State of Washington, at page 1, in Volume 1053 of deeds, and subject also to the reservations in favor of the Company set forth in such contract and exhibit.

And the said Company hereby covenants to and with the said City, its successors and assigns, that it, the said Company, is the owner of said property and interests therein and has good right to sell and convey the same, that said property and interests therein are free and clear from all liens, claims, demands and incumbrances whatsoever, and that it, the said Company, will and its successors and assigns shall, warrant and forever defend the same
342 against all lawful claims and demands whatsoever.

It is also further agreed between the parties hereto that if at the time of the delivery of this deed any lien shall have attached to the property or any part thereof for the year 1919 for any tax for the year 1919 such lien shall not constitute a breach of warranty, and that if such tax shall become collectible the same shall be paid before the same shall become delinquent by the respective parties hereto in amounts proportionate to the respective periods of time that the said parties are respectively in possession of said property during the year 1919.

In witness whereof the company has caused this instrument to be duly executed by its proper officers thereunto duly authorized and the City of Seattle has, by its proper officers thereunto duly authorized, caused this instrument to be executed and its corporate seal to be affixed in token of its acceptance of this instrument, all on the day and year first above written. Puget Sound Traction, Light & Power Company, By Alton W. Leonard, Its President. Attest: James B. Howe, Its Secretary. [P. S. T. L. & P. Co. Corporate Seal.] The City of Seattle, By ———. Attest: ———, City Comptroller and ex-Officio City Clerk. Signed, Sealed and Delivered in presence of: ———. Revenue Stamps, \$1,000.00, Duly cancelled.

343 STATE OF WASHINGTON,
County of King, ss:

On this 31st day of March, A. D. 1919, before me, personally appeared Alton W. Leonard, to me known to be the President, and James B. Howe, to me known to be the Secretary, of Puget Sound Traction, Light & Power Company, the corporation that executed the within and foregoing instrument, and the said Alton W. Leonard as president, and the said James B. Howe as secretary each acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and each on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written. Edgar L. Crider, Notary Public in and for the State of Washington, Residing at Seattle. [Notary Seal.]

344 STATE OF WASHINGTON,
County of King, ss:

On this — day of March, A. D. 1919, before me, personally appeared W. D. Lane, to me known to be the President of the City

Council and Acting Mayor of the City of Seattle, and H. W. Carroll, to me known to be the City Comptroller, and ex-officio City Clerk of the City of Seattle, the municipal corporation that executed the within and foregoing instrument, and the said W. D. Lane as President of the City Council and Acting Mayor of the City of Seattle and the said H. W. Carroll, as City Comptroller and ex-officio City Clerk of the City of Seattle, each acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and each on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said municipal corporation.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written. ———, Notary Public in and for the State of Washington, Residing at Seattle.

[File endorsement omitted.]

345 (Endorsed on back of Instrument:) Office Copy. D. N. King. Conveyance. Puget Sound Traction, Light & Power Company to The City of Seattle. Filed in City Comptroller's Office, March 31, 1919. Comptroller's File #72982. Filed for record in Auditor's Office, King County, Wash., March 31, 1919. Recorded: Vol. 1059 of Deeds, Page 1, and in Vol. 60 Miscellaneous Records Page 229, Records of King County.

346

Plaintiff's Exhibit C.

[Filed June 7, 1920.]

347

Page 602.

Personal Property Tax Roll of King County, State of Washington, for the Year 1918.

Payments to July 1st, 1918.

Amount.		Month.	Day.	Receipts.	Remarks—By whom paid, etc.
Dollars.	Cts.			No.	
423,503.	20	3	11	50945	Puget Sound Traction, Light & Power Company.

(Here follow tables marked side folios pages 348 and 349.)

Copy.

Page 655.

Personal Property Tax Roll of King County, Year 1919.

State Board.

Line.	Name of person, firm, company, or corporation to whom assessed.	Address.	Description of personal property.	Municipalities.	School district.	Levy, mills.	Total assessed valuation of per- sonal property as equalized by the board of equali- zation, dollars.	Consolidated tax. Dollars. Cts.
1	Puget Sound Traction, Light and Power Company	Seattle.....	Street Ry. Line.....	.....	.....	.....	5,640,000	401,017.76
2								
3								
4								
5								
6						25.80		
7								
8								
9								
10		School Dist. #1.....	\$5,640,000 at 13.50 mills.....		76,140.00			
11								
12								
13								
14								
15		Municipalities:						
16		So. Seattle	\$112,000 at 31.05 mills.....		3,477.60			
17		West Seattle.....	700,000 at 30.60 mills.....		21,420.00			
18		South Park	56,000 at 30.60 mills.....		1,713.60			
19		Ravenna	56,000 at 31.05 mills.....		1,738.80			
20		So. East Seattle.....	56,000 at 31.05 mills.....		1,738.80			
21		Georgetown	112,000 at 30.88 mills.....		3,458.56			
22		Ballard	560,000 at 31.63 mills.....		17,712.80			
23		Seattle, New Limits.....	1,400,000 at 31.98 mills.....		44,772.00			
24		Seattle, Old Limits.....	2,588,000 at 32.20 mills.....		83,333.60			

[File endorsement omitted.]

Entd.—2.

Copy.

Page 602.

Personal Property Tax Roll, King County, for the Year 1918.

State Board.

Name of person, firm, company, or corporation to whom assessed.	Address.	Description of personal property.	Road district.	School district.	Levy, mills.	Total assessed valuation of personal property as equalized by the board — equalization, dollars.	Consolidated tax, Dollars. Cts.
Puget Sound Traction, Light & Power Co..	Seattle.....	Street car Ry., Light & Power Lines.	Consolidated Tax.	.....	19.63	7,675,560	423,503.20
	Road District #1.....	15,850 at 6.10 mills.....	96.69	.....	.....	.....	.....
	" " #2.....	270,800 " 5.40 "	1,462.32	.....	.....	.....	.....
	" " #3.....	52,650 " 8.32 "	438.05	.....	.....	.....	.....
	" " #4.....	39,600 " 10. "	396.00	.....	.....	.....	.....
	" " #6.....	14,100 " 7.76 "	109.42	.....	.....	.....	.....
	" " #7.....	15,000 " 9.90 "	148.50	.....	.....	.....	.....
	" " #8.....	1,190 " 10. "	11.90	.....	.....	.....	.....
	School " #1.....	7,179,300 " 9.95 " .....	.....	71,434.04	.....	.....	.....
	" " #3.....	13,530 " 11.50 " .....	.....	155.59	.....	.....	.....
	" " #5NH.....	10,280 " 4. " .....	.....	41.12	.....	.....	.....
	" " #7.....	33,340 " 16. " .....	.....	533.44	.....	.....	.....
	" " 10NH.....	2,650 " 9. " .....	.....	23.85	.....	.....	.....
	" " 14.....	2,550 " 10. " .....	.....	25.50	.....	.....	.....
	" " 15.....	1,320 " 6. " .....	.....	7.92	.....	.....	.....
"A"	" " 21.....	1,900 " 10.50 " .....	.....	19.95	.....	.....	.....
"O"	" " 25NH.....	10,080 " 7. " .....	.....	70.56	.....	.....	.....
	" " 39.....	1,600 " 9. " .....	.....	14.40	.....	.....	.....
	" " 42NH.....	2,950 " 8. " .....	.....	23.60	.....	.....	.....
	" " 47NH.....	620 " 3. " .....	.....	1.86	.....	.....	.....
"A"	" " 49.....	5,600 " 20. " .....	.....	112.00	.....	.....	.....
	" " 22.....	2,840 " 7. " .....	.....	19.88	.....	.....	.....
	" " 28NH.....	1,200 " 12. " .....	.....	14.40	.....	.....	.....
	" " 46.....	4,740 " 14. " .....	.....	66.36	.....	.....	.....
	" " 52NH.....	3,200 " 10. " .....	.....	32.00	.....	.....	.....
	" " 76.....	2,650 " 10. " .....	.....	26.50	.....	.....	.....
	" " 87NH.....	15,000 " 4. " .....	.....	60.00	.....	.....	.....
	" " 90NH.....	2,650 " 10. " .....	.....	26.50	.....	.....	.....
	" " 97NH.....	2,650 " 4. " .....	.....	10.60	.....	.....	.....
"A"	" " 71.....	4,750 " 15. " .....	.....	71.25	.....	.....	.....
"O"	" " 110.....	1,600 " 7. " .....	.....	11.20	.....	.....	.....
	" " 125NH.....	1,050 " 5. " .....	.....	5.25	.....	.....	.....
	" " 144.....	11,000 " 21. " .....	.....	231.00	.....	.....	.....
	" " 145NH.....	6,300 " 6. " .....	.....	37.80	.....	.....	.....
	" " 158NH.....	2,100 " 7. " .....	.....	14.70	.....	.....	.....
	" " 161.....	6,450 " 12. " .....	.....	77.40	.....	.....	.....
	" " 162.....	21,000 " 14.50 " .....	.....	304.50	.....	.....	.....
"O"	" " 165.....	1,300 " 10. " .....	.....	13.00	.....	.....	.....
	" " 171NH.....	1,900 " 10. " .....	.....	19.00	.....	.....	.....
	" " 174.....	264,300 " 11.50 " .....	.....	3,039.45	.....	.....	.....
	" " 175NH.....	9,200 " 13.50 " .....	.....	124.20	.....	.....	.....
	" " 185.....	2,100 " 16. " .....	.....	33.60	.....	.....	.....
	" " 188.....	10,760 " 18. " .....	.....	355.68	.....	.....	.....

"A"

"O"

"A"

"A"

"O"

"O"

"	"	#7	33,340	"	16.	"	533.44				
"	"	10NH	2,650	"	9.	"	23.85				
"	"	14	2,550	"	10.	"	25.50				
"	"	15	1,320	"	6.	"	7.92				
"	"	21	1,900	"	10.50	"	19.95				
"	"	25NH	10,080	"	7.	"	70.56				
"	"	39	1,600	"	9.	"	14.40				
"	"	42NH	2,950	"	8.	"	23.60				
"	"	47NH	620	"	3.	"	1.86				
"	"	49	5,600	"	20.	"	112.00				
"	"	22	2,840	"	7.	"	19.88				
"	"	28NH	1,200	"	12.	"	14.40				
"	"	46	4,740	"	14.	"	66.36				
"	"	52NH	3,200	"	10.	"	32.00				
"	"	76	2,650	"	10.	"	26.50				
"	"	87NH	15,000	"	4.	"	60.00				
"	"	90NH	2,650	"	10.	"	26.50				
"	"	97NH	2,650	"	4.	"	10.60				
"	"	71	4,750	"	15.	"	71.25				
"	"	110	1,600	"	7.	"	11.20				
"	"	125NH	1,050	"	5.	"	5.25				
"	"	144	11,000	"	21.	"	231.00				
"	"	145NH	6,300	"	6.	"	37.80				
"	"	158NH	2,100	"	7.	"	14.70				
"	"	161	6,450	"	12.	"	77.40				
"	"	162	21,000	"	14.50	"	304.50				
"	"	165	1,300	"	10.	"	13.00				
"	"	171NH	1,900	"	10.	"	19.00				
"	"	174	264,300	"	11.50	"	3,039.45				
"	"	175NH	9,200	"	13.50	"	124.20				
"	"	185	2,100	"	16.	"	33.60				
"	"	186	19,760	"	18.	"	355.68				
"	"	188NH	12,600	"	13.50	"	170.10				
"	"	189	4,750	"	10.	"	47.50				
"	"	194	4,750	"	15.	"	71.25				
Union	High School, Dist.										
"A"			9,490	"	7.	"	66.43				
Union	High School, Dist.										
"O"			4,500	"	7.	"	31.50				
Non-High School District...			84,430	"	1.10	"	92.87				

Municipal-
ities.

Kent—Old Limits	7,400	"	15.67	"	115.96						
Kirkland	4,750	"	8.50	"	40.38						
Redmond	4,750	"	8.	"	38.00						
Bothell	4,750	"	10.	"	47.50						
North Bend	4,750	"	16.	"	76.00						
Snoqualmie	2,370	"	12.	"	28.44						
Tukwila	2,660	"	10.	"	26.60						
Renton—Old Limits	27,500	"	12.20	"	335.50						
Auburn	16,850	"	14.40	"	242.64						
Issaquah	15,270	"	10.	"	152.70						
Seattle—So. Seattle	74,600	"	25.60	"	1,909.76						
Seattle—W. Seattle	366,300	"	25.13	"	9,205.12						
Seattle—So. Park	37,000	"	25.13	"	929.81						
Seattle—Ravenna	22,100	"	25.60	"	565.76						
Seattle—Se. Seattle	14,900	"	25.60	"	381.44						
Seattle—Georgetown	181,000	"	25.78	"	4,666.18						
Seattle—Columbia	14,900	"	25.41	"	378.61						
Seattle—Ballard	147,270	"	27.42	"	4,038.14						
Seattle—New Lmts.	1,122,000	"	26.61	"	29,856.42						

PLAINTIFFS' EXHIBIT D.

Original.

Treasurer's Office, King County, Washington.

Personal 1919 Taxes.

Statement of Personal Property Tax—1919 Rolls—Seattle, February 2, 1920.

Important.—Do not detach duplicate.

Return both with your Remittance or Present Them When Making Payment, as This Becomes your Receipt when Stamped Paid by County Treasurer.

Personal Property Taxes as per This Statement Are Now Due and Payable and become Delinquent March 15th, 1920.

Make All Checks, Drafts or Money Orders Payable to Wm. A. Gaines, Treasurer, King County, Washington. 199815.

Puget Sound Traction, Light & Power Co., Seattle.

Roll.	Page.	Line.	Description of property.	Tax limits.		Year 1919 tax.	Year — tax.	Total.
				Road.	School.			
6	655	1	Street Railway Line.....		Various	401,017.76	.....	.....
Tax .....			.....		.....	401,017.76	.....	.....
Interest .....			.....		.....	.....	.....	.....
Total .....			.....		.....	.....	.....	.....

Ent'd—2.

Filed in open court, June 7, 1920. Percy F. Thomas, Clerk. Eugene Meacham, Deputy.

Notice.

Personal property taxes are a lien upon all real and personal property of the person assessed, from date of assessment until paid and if not paid on or before date of delinquency interest at rate of 15 per cent per annum is added and it becomes subject to distraint and foreclosure as provided by the

Revenue Laws of 1915.—Amended Sec. 3223 R. & B. Code.—On the first Monday of February succeeding the levy of taxes, the County Treasurer shall proceed to collect all personal property taxes. In the event that he is unable to collect same in due course, he shall prepare papers in distraint,—and shall file same with the County Sheriff, who shall immediately without demand or notice distraint sufficient goods and chattels belonging to the person charged with such taxes, to pay the same with interest at the rate of 15 per cent per annum from the 15th day of March of such year, together with all accruing costs,—

Revenue Laws of 1911.—After personal property has been assessed, it shall be unlawful for any person to remove the same from the State, until taxes and interests are paid, or until notice has been given to the County Treasurer describing the property to be removed and in case of public sales of personal property a list of the property desired to be sold shall be sent to the Treasurer, and no property shall be sold at such sale until the tax has been paid, the tax to be computed upon the consolidated tax levy for the previous year. Any person violating the provisions of this act shall be guilty of a misdemeanor.

No rebate on personal property tax allowed for tax levy of 1919.
See other side.

Do not detach this duplicate.

Duplicate.

Treasurer's Office, King County, Washington.

Personal 1919 Taxes.

Statement of Personal Property Tax—1919 Rolls—Seattle, February 2, 1920.

Puget Sound Traction, Light & Power Co., Seattle.

Roll. Page.	Line.	Description of property.	Tax limits.		Year 1919 tax.	Year — tax.	Total.
			Road.	School.			
6	655	1 Street Railway Line.....	Various	5,640,000	401,017.76	.....	.....
Tax .....		.....	.....	.....	401,017.76	.....	.....
Interest .....		.....	.....	.....	.....	.....	.....
Total .....		.....	.....	.....	.....	.....	.....

351½

Tax Levy, Year 1919.

State:

State and County.

	Mills.
General Fund	2.6693
School Fund	1.8353
Military Fund	0.2669
Public Highway Fund	0.8896
Permanent Highway Fund	1.3343
University Fund	0.6573
State College Fund	0.4005
Bellingham Normal School Fund	0.1351
Cheney Normal School Fund	0.1155
Ellensburg Normal School Fund	0.0960
Capitol Building Fund	0.4441
Reclamation Revolving Fund	0.4441
Total State	9.2880
County:	
Current Expense Fund	8.432
School Fund	2.879
Road and Bridge Fund	3.057
Pierce & King County River Fund	0.407
Soldiers' Relief Fund	0.085
River Improvement Fund	0.204
Bond Interest and Redemption Fund	1.448
Total County	16.512
Total State and County	25.8

Municipalities.

Seattle:	School districts.	School levy.	Municipal levy.	State, county.	Total levy, mills.
Old Limits	1	13.5	32.20	25.8	71.50
New Limits	1	13.5	31.98	25.8	71.28
Ballard	1	13.5	31.63	25.8	70.93
Columbia	1	13.5	31.65	25.8	70.95
Dunlap	1	13.5	30.60	25.8	69.90
Georgetown	1	13.5	30.88	25.8	70.18
Ravenna	1	13.5	31.05	25.8	70.38
Southeast Seattle	1	13.5	31.05	25.8	70.35
South Park	1	13.5	30.60	25.8	69.90
South Seattle	1	13.5	31.05	25.8	70.35
West Seattle	1	13.5	30.60	25.8	69.90
Yesler	1	13.5	30.42	25.8	69.72

Auburn:

	School districts.	School levy.	Municipal levy.	State, county.	Total levy, mills.
Old Limits	162	20.	16.5	25.8	62.3
New Limits	162	20.	13.9	25.8	59.7
Bothell	46	14.	15.0	25.8	54.8
Duvall	14	13.	10.0	25.8	48.8
Enumclaw	170	15.	18.0	25.8	58.8
Issaquah	186	19.	10.0	25.8	54.8
Kent	3	11.5	19.2	25.8	56.5
Kirkland, U-A and ..	71	39.	10.0	25.9	74.8
North Bend	189	10.	21.0	25.8	56.8
Pacific	161	28.	10.0	25.8	63.8
Redmond	194	20.	12.0	25.8	57.8
Renton	7	18.	17.5	25.8	61.3
Skykomish	192	19.	21.0	25.8	65.8
Snoqualmie	174	11.	10.0	25.8	46.8
Tolt, U-O	165	17.	19.0	25.8	61.8
Tukwila	144	26.	10.0	25.8	61.8

School Districts.

No.	Mills.	No.	Mills.
3.....	11.5	111.....	11
5.....	5	112.....	9
7.....	18	114.....	23
10.....	11	117.....	13
13.....	25	120.....	23
14.....	13	121.....	3
15.....	11	122.....	11
16.....	11	123.....	21
19.....	16	124.....	9
21.....	22	125.....	15
22.....	11	130.....	23
23.....	11	131.....	13
24.....	11	134.....	6
25.....	7	135.....	14.5
28.....	13	137.....	12
32.....	8	138.....	4
33.....	10	139.....	5
36.....	8	140.....	7
37.....	16	144.....	26
38.....	11	145.....	9
39.....	7	146.....	11
42.....	8	147.....	22
44.....	6	149.....	4
46.....	14	150.....	11
47.....	4	155.....	5

Plaintiffs' Exhibit C.

No.	Mills.	No.	Mills.
49.....	20	156.....	6
51.....	14	158.....	11
52.....	13	161.....	28
54.....	10	162.....	20
55.....	3	163.....	4
57.....	11	164.....	11
58.....	7	165.....	10
60.....	4	167.....	7
62.....	21	168.....	11
63.....	11	169.....	12
64.....	7	170.....	15
65.....	11	171.....	21
66.....	31	172.....	14
69.....	11	174.....	11
71.....	29	175.....	14
72.....	20	176.....	18
74.....	11	177.....	21
75.....	11	179.....	16
76.....	13	180.....	18
79.....	5	181.....	26
80.....	8	182.....	16
82.....	10	183.....	31
83.....	10	184.....	11
84.....	10	185.....	21
86.....	10	186.....	19
87.....	11	187.....	24
90.....	11	188.....	16
91.....	8	189.....	10
92.....	8	190.....	26
93.....	6	191.....	11
94.....	11	192.....	19
95.....	6	193.....	13
96.....	9	194.....	20
97.....	11	195.....	6
102.....	8	"A".....	10
105.....	12	"J".....	10
109.....	21	"N".....	11
110.....	7	"O".....	7

Road Districts.

No.	Mills.	No.	Mills.
1.....	10	5.....	8.3
2.....	8.2	6.....	10
3.....	10	7.....	9.7
4.....	10	8.....	10
9.....		8.1	

Water Districts.

No.	Mills.
1.....	10
2.....	2
3.....	5
4.....	..
5.....	2.6

Personal, 6—655.

Puget Sound Traction, Light & Power Co.

Con.	145,512.00
School No. 1.....	5,640,000 76,140.00
South Seattle	112,000 3,477.60
West Seattle	700,000 21,420.00
South Park	56,000 1,713.60
Ravenna	56,000 1,738.80
So. East Seattle	56,000 1,738.80
Georgetown	112,000 3,458.56
Ballard	560,000 17,712.80
Seattle—New L.....	1,400,000 44,772.00
“ Old L.....	2,588,000 83,333.60
	<hr/> 401,017.76.

Plaintiff's Exhibit E.

[Filed June 7, 1920.]

Copy.

Tax Commissioner's Form No. 24.

Olympia, Washington.

To Frank W. Hull, County Assessor of King County, State of Washington:

This is to certify That the assessed valuation of the operating property of the Puget Sound Traction, Light & Power Company in King County, State of Washington, for the year 1919, as revised, corrected and equalized by the State Board of Equalization is as follows:

Interurban lines:

Track and Right-of-Way assessed as real property.. \$.....
Rolling Stock and other movable personal property

Street railway lines:

Including track, equipment, rolling stock and other
movable property assessed as personal property.. 5,640,000.00

Total Equalized Valuation..... \$5,640,000

Given this 20th day of September, 1919. State Board of Equalization, by C. W. Clausen, Chairman. Attest: J. M. Thatcher, Secretary. Entd.—2. 19.

[File endorsement omitted.]

354

Copy.

Puget Sound Traction, Light & Power Company.

King County, 1919.

School or road dist. No.	Town or city.	Description of road.	Mileage.		
			Main track.	2nd.	Sidings.
.....	Seattle Division, Seattle.....	Main Line	108.870	77.110	16.790
Totals in County.....			108.870	77.110	16.790

355

Plaintiff's Exhibit F.

[Filed June 7, 1920.]

March 15, 1919.

Mr. A. W. Leonard, President Puget Sound Traction, Light & Power Co., Seattle, Washington.

DEAR SIR: You are advised that a valuation of \$12,000,000 has been placed by the State Tax Commissioner, upon the operating property of the Puget Sound Traction, Light & Power Company, for assessment purposes for the year 1919.

These figures represent the 100% value and will be subject to the ratio of assessed to actual value as determined by the State Board of Equalization for the county in which the road operates.

You are also advised that this valuation is subject to change by the State Board of Equalization, which meets on September 2, 1919. You will be notified at a later date of the exact day upon which your road may be heard.

I am sending this letter to you for the reason that I am not certain as to whether Mr. Dexter or Mr. Brockett is your tax agent at this time. Very truly yours, ———, State Tax Commissioner.
C. R. J. S.

356

March 15, 1919.

Mr. Frank W. Hull, County Assessor, Seattle, Wash.

DEAR SIR: This office has this day made a valuation upon the street railway operating property of the Puget Sound Traction, Light & Power Company, for the year 1919.

This assessment covers only the street railway operating property and you will proceed to value and assess all property of the Puget Sound Traction, Light & Power Company heretofore valued and assessed by this office with the exception of that property described in a certain inventory filed in the office of the City Comptroller on the 30th day of December, 1919, and hearing Comptroller's file No. 72055. Very truly yours, ———, State Tax Commissioner.
C. R. J. S.

357

March 18, 1919.

Mr. A. W. Leonard, President Puget Sound Traction, Light & Power Co., Seattle, Washington.

DEAR SIR: Supplementing my letter of March 15th, wherein I advised you that a valuation of \$12,000,000 had been placed by the State Tax Commissioner upon the operating property of the Puget Sound Traction, Light & Power Company for assessment purposes for the year 1919, I beg to advise that this assessment covers only the street railway operating property of your company located in King County, and that a separate assessment will be made by this office upon the property of the Puget Sound Traction, Light & Power Company in Whatcom County. Very truly yours, ———, State Tax Commissioner. CRJ. S. 139,815. 20. Copy. L. S.

[File endorsement omitted.]

358

Plaintiff's Exhibit G.

[Filed June 7, 1920.]

To the Honorable the State Tax Commission of Washington:

Now come The City of Seattle and Puget Sound Traction, Light & Power Company, and, denying the jurisdiction of the State Tax Commissioner, do hereby object to and protest against the action of the Tax Commissioner in attempting to assess on the 15th day of March, 1919 certain property formerly owned by such Company and conveyed to the City on March 31st, 1919, which property is more particularly referred to in a letter of the State Tax Commissioner, dated March 15th, 1919, to the County Assessor of King County, Washington, a copy of which letter is hereto attached, marked Exhibit "A" and made a part hereof.

The grounds of the denial of the jurisdiction of the State Tax Commissioner and of this protest and objection are as follows:

1. The Honorable the State Tax Commissioner had no jurisdiction to make any assessment of such property or any part thereof on the 15th day of March, 1919, or at any date subsequent thereto.

2. The property mentioned was the property of the Puget Sound Traction, Light & Power Company prior to and until 4.30 o'clock P. M., March 31st, 1919, at which time the company conveyed and delivered such property to the City of Seattle, a municipal corporation of the first class, created and existing under the laws of the State of Washington. Ever since 4.30 o'clock P. M., March 31st, 1919 the City of Seattle has been and it now is the owner of such property, which property, ever since March 31st 1919, has been by the City of Seattle used in serving the public. At the time of such sale the property was not, and since such sale it has not been, subject to assessment for the purposes of taxation and, under the Constitution and Statutes of the State of Washington, it was and is exempt
359 from taxation, and was so exempt prior to the earliest date at which any assessment thereof could have been made by the State Tax Commissioner had the Company remained the owner thereof.

3. That no report or listing of its property in the year 1919 was made by the Company or by any one to the State Tax Commissioner prior to April 21st 1919, and on the 15th day of March, 1919, the State Tax Commissioner did not have in his possession any report or data sufficient to enable him to make an assessment of such property, nor at any time prior to such first mentioned date was such report or data in the possession of the State Tax Commissioner. The Company on the 21st day of April, 1919, pursuant to statute, did file with the Tax Commissioner a report showing its property and income down to and inclusive of the 31st day of December, 1918, together with proof that on the 31st day of March, 1919 the property mentioned in Exhibit "A" was sold and conveyed by the Company to the City.

4. In the making of such attempted assessment no hearing was allowed and one is hereby demanded, and for the purpose of hearing unprejudiced by an existing order made without hearing we hereby demand that the attempted assessment be vacated as preliminary to the hearing hereby demanded.

These protestants therefore object to the jurisdiction of the State Tax Commissioner, and object to and protest against the attempted assessment of such property for want of jurisdiction in the State

Tax Commissioner to make any assessment thereof, and be-
360 cause such property is not subject to assessment for the purposes of taxation. The City of Seattle, By Walter F. Meier, Its Corporation Counsel, and Thomas J. L. Kennedy, Assistant Corporation Counsel. Puget Sound Traction, Light & Power Company, By James B. Howe, Norwood W. Brockett, Its attorneys.

Received a true copy of within protest this 25th day of April, 1919.
C. R. Jackson, Tax Commissioner.

361 STATE OF WASHINGTON,
County of King, ss:

W. H. McGrath, being first duly sworn, on oath deposes and says: I am Vice President of Puget Sound Traction, Light & Power Company named in the foregoing protest; the President of the Company is absent from the State, and I make this verification in behalf of the protestants. I have read the foregoing protest, know the contents thereof and believe the same to be true. W. H. McGrath.

Subscribed and sworn to before me this 24th day of April, 1919. Edgar L. Crider, Notary Public in and for the State of Washington, Residing at Seattle. (Notarial Seal.)

362 **Exhibit "A" to Plaintiff's Exhibit G.**

March 15, 1919.

Mr. Frank W. Hull, County Assessor, Seattle, Wash.

DEAR SIR: This office has this day made a valuation upon the street railway operating property of the Puget Sound Traction, Light & Power Company, for the year 1919.

This assessment covers only the street railway operating property and you will proceed to value and assess all property of the Puget Sound Traction, Light & Power Company heretofore valued and assessed by this office with the exception of that property described in a certain inventory filed in the office of the City Comptroller on the 30th day of December, 1918, and bearing Comptroller's File No. 72055. Very truly yours, C. R. Jackson, State Tax Commissioner. CRJ.—S.

[File endorsement omitted.]

363 **Plaintiff's Exhibit H.**

[Filed June 14, 1920.]

Corporation counsel. Received Mar. 10, 1919. Referred to R. H. E.

St. Ry. Purchase File.

#767.

March 8, 1919.

Honorable L. L. Thompson, Attorney General, Olympia, Washington.

DEAR SIR: This office desires your opinion in regard to the question presented by the following state of facts:

This office under the law, makes an assessment against the property of the Puget Sound Traction, Light & Power Company. The

City of Seattle has contracted for the purchase of the street railway lines and street railway property and equipment of the Puget Sound Traction, Light & Power Company. The Supreme court of this state has upheld the validity of the bonds to be issued for the purchase of this property, and the deal will probably be completed within a short time, and the title will pass.

I am advised by the city attorney that the details of the transaction will in all probability be completed before the 1st of April.

The ordinance authorizing the purchase of the lines provides that "State, county and municipal taxes levied against the property for the year 1919 shall be paid before the same shall become delinquent by the respective parties hereto in amounts proportional to the respective periods of time that the said parties are respectively in possession of said party during the year 1919."

Section 9152 of R. & B. Code provides "* * * All operating property of street railways shall be assessed and taxed as personal property."

Section 9101 of R. & B. Code provides "* * * All personal property in this state subject to taxation shall be listed and assessed every year with reference to its value on the 1st day of March preceding the assessment."

Section 9235 of R. & B. Code provides "* * * The taxes assessed upon personal property shall be a lien upon all the real and personal property of the person assessed from and after the date upon which such assessment is made and no sale or transfer of either real or personal property shall in anyway effect the lien for such taxes upon such property."

Section 9147 of R. & B. Code contains an evident error but we believe that the statute is meant to read that between the first day of March and the first day of June, the Tax Commissioner shall ascertain and determine the value of each railroad company in the state. The term railroad company under subdivision six of section 9142 is defined to include property of street railway companies.

Section 9145 of R. & B. Code provides that "Every railroad company operating in this state shall between the first day of January and the first day of April in each year * * * make and file with the commissioner" a report containing the information such as the commissioner may require.

Section 9147 also provides that every company shall be entitled on its own motion to hearing and to present evidence before such commissioner at any time between the first day of April and the first day of May relating to the value of the property of such company. This section also provides, "The value of property of railroads for assessment shall be made as of the same time and in like manner as the value of the general property of the state is ascertained and determined."

The question here presented is as follows:

1. In view of the fact that the report upon which the assessment of the tax commissioner is based is not required to be filed until March 30th and in view of the fact that a company is entitled under

the statute to a hearing during the month of April, when after March 1st can a valid assessment be made upon which the lien of the tax will attach.

2. If such assessment cannot be completed before title passes to the City of Seattle, should any assessment be made for the year 1919 against this property. In this connection it will be noted that a private owner will have been in possession of the property for a portion of the year 1919.

365 I might add that it has always been the practice of this office to make the assessments on this class of property date as of May 31st. Respectfully yours, R. R. Jackson, State Tax Commissioner. CRJ—S.

#9124, Personal Prop. of St. Ry. defined.

[File endorsement omitted.]

366

Defendant's Exhibit 2.

[Filed June 7, 1920.]

P. S. T., L. & P. Co.

McGilvra's 3rd Addition:

Lot			Real.	Imps.
1	Block 13	.....	510	
2		.....	510	
3		.....	510	
4		.....	510	
5		.....	510	
6		.....	510	1,490
7		.....	510	
8		.....	510	
9		.....	510	
10		.....	510	530
11		.....	510	
12		.....	640	250
13		.....	640	
14		.....	510	
15		.....	510	
16		.....	510	
17		.....	510	
18		.....	510	
19		.....	510	
20		.....	510	
21		.....	510	
22		.....	510	
23		.....	510	
24		.....	710	

McGilvra's 3rd Replat:

		Real.	Imps.
Lot 1	Block C	290	
2	.....	290	80
3	.....	300	
4	.....	310	
5	.....	330	
6	.....	330	80
7	.....	340	
8	.....	340	
9	.....	340	
10	.....	340	100
4	Block D	40	
5	.....	150	370
6	.....	200	
7	.....	270	280
8	.....	290	
9	.....	290	
10	.....	280	220
11	.....	280	
12	.....	270	20
13	.....	380	
14	.....	380	250

Craven's Div. of Green Lake:

2	Block 7	10
3	.....	70
4	.....	150
5	.....	220
6	.....	260

Hillman's City Div. #2:

S. 30 ft. Lot 14	Block 19	110
" " 15	.....	60
" " 16	.....	70
South 30' " 17	.....	70
South 30' " 18	.....	70
South 30' " 19	.....	70
South 30' " 20	.....	80

Denny & Hoyt's:

Lot 8	Block 41	430
9	.....	430
10	.....	430
11	.....	430
		380

Lake Washington Shore Lands:

		Real.	Imps.
Lot	1 Block 27	710	
	2	620	
	3	620	
	4	570	
	5	570	
	6	570	
	7	520	
	8	520	
	9	520	
	10	480	
	11	430	
	12	430	
	13	520	
	14	520	
	15	430	
	16	430	
	17	430	
	18	380	
	19	380	
	20	380	
	21	380	
	22	320	
	23	320	
	24	320	

Lake Union Shore Lands:

S. E. $\frac{1}{2}$ Lot	10 Block 101	380
	11	760
	12	760
	13	760
	14	760
Wly 20'	15	520

T. Hanford's Addition:

Lot	11 Block 21	260
	12	260
	13	260
	14 21	260
	2 32	210
	11 31	210

367 H. E. Holmes Add.:

Lot	12 Block 8	680
	13 8	910

City Gardens:

		Real.	Imps.
Lot 7	Block A	720	
8	.....	600	240

McKenzie & Dempsey:

Lot 5	Block 10	170	
6	10	170	

Rainier Valley 2nd:

Lot 1	Block 5	290	
1	6	130	
2	6	150	

Rainier Valley Add.:

Lot 1	Block 1	430	
2	1	340	

Sturtevant's R. B. Acre Tracts:

S. 20' of W $\frac{1}{2}$ Tract 6.....	\$40
--	------

Walker's Add.:

Lot 2	Block 16	600	
3	550	
4	510	
5	510	
6	16	600	

Tax on Lot #22 E. Hanford's:

Donation Claim	860
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Tax Lot 14, Section 33:

Twp 25, range 4	\$6,750	2,000
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Hillman's City Div. #6:

Lot 1 Block 14.....	380
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Total	53,860	6,290
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[File endorsement omitted.]

368

Defendant's Exhibit 1.

[Filed June 7, 1920.]

Copy.

Electric Railways.

Name of company.	1919 real property.	1919 personal property.	1919 total.
1. Puget Sound Traction, Light & Power Co. King County		12,000,000	12,000,000

[This assessment made March 15, 1919, and covers the street railway system property and equipment in the City of Seattle, described in inventory filed in the office of the Comptroller of the City of Seattle December 30, 1918, bearing Comptroller's file number 72055, excepting from said inventory, however, certain non-operating real estate, a list of which is on file in the office of the State Tax Commissioner.]

139,815.

[File endorsement omitted.]

369 In Supreme Court of Washington, Department Two.

No. 16497.

Opinion, Mitchell, J.

[Filed October 15th, 1921.]

The city of Seattle purchased from the Puget Sound Traction, Light & Power Company a street railway "system, property and equipment." The purchase was authorized by ordinances of the city duly approved by the mayor. The actual transfer of the property was effected by an instrument dated and delivered March 31, 1919, and a physical delivery of the property the same day. The conveyance contained in its provisions the following:

"It is also further agreed between the parties hereto that if at the time of the delivery of this deed any lien shall have attached to the property or any part thereof for the year 1919 for any tax for the year 1919 such lien shall not constitute a breach of warranty, and that if such tax shall become collectible the same shall be paid before the same shall become delinquent by the respective parties hereto in amounts proportional to the respective periods of time that the same parties are respectively in possession of said property during the year 1919."

On or after March 15 but prior to March 31, 1919, the state tax commissioner assessed that portion of the property of the company afterwards transferred to the city. The validity of that assessment is the one involved in this suit. It covered operating property
370 and consisted of a substantial amount of real property but more largely of personal property and was assessed in solido as personal property. Subsequently the company unavailingly protested against the assessment to the state tax commissioner and also before the state board of equalization, that the property was exempt from taxation. The assessment was in due time certified to the assessor for King county. Taxes were levied thereon and the county treasurer gave notice of his demand for the personal property taxes for the year 1919.

The company instituted this action to restrain the collection of the taxes and to have the same declared null and void and cancelled as a cloud upon the title to other real property belonging to the company. The city was made a defendant. The complaint prayed that if the taxes be upheld the judgment should require the city and the company to pay, each its proportionate part in accordance with the agreement between them. The company alleged that the property became public property before any lien for taxes attached. The city admitted the allegations of the complaint and filed a complaint alleging essentially the same facts as the company and praying for the same relief. The county and its tax officers who were the adversary defendants admitted that the property was assessed as alleged, and claimed it was properly assessed by the state tax commissioner on March 15, 1919; that at that time the lien for taxes attached; and that when the city acquired title on March 31, 1919, it did so subject to the lien.

The superior court gave judgment in favor of the county and its officers, against both the company and the city, and declined to adjudicate the relative rights and obligations of the company and the city to an apportionment of the taxes under the terms of the contract of conveyance between them. The company and the city have
appealed.

371 The contention of both appellants are similar. In the company's brief it is claimed of assignments 1 and 2 that if the property upon which respondents claim a lien was not subject to such lien the alleged tax would constitute a cloud upon the title, and if it was subject to such lien since appellants had contracted with each other to divide it the court should have adjudicated their respective portions. The propositions are not made clear by argument. If by the first it is meant that the tax being a personal property tax in the name of the company it thereby casts a cloud on the title of real property the company still owns, the answer is that by sec. 9245, Rem. Code (considered in *Scandinavian American Bank v. King County*, 92 Wash. 650, 159 Pac. 786) no such cloud can be cast until the county treasurer selects specific real property and charges it with the lien of the personal property tax. If it is meant that the cloud is cast upon the property assessed then the answer is to be

found in the disposition of the other assignments with reference to the validity of the tax. On the other point—apportioning the tax between the company and the city—it is claimed “equity having acquired jurisdiction it was error on the part of the superior court not to adjudicate the entire matter.” But the pleadings in the case show that no issue was formed upon the subject. If the taxes are paid without sale the respondents care not how the amount may be divided if more than one person pays them, and between those parties their pleadings in this respect are identical. They present no controversy with each other; there is nothing to adjudicate.

Next it is claimed that the property sold and delivered to the city was not subject to assessment or taxation for that year. In considering this assignment we assume for the moment that the assessment was made at a proper time, by the proper officer and that all the property was for such purpose properly classified as personal
372 property, which will be later discussed herein. Appellants rely on art. 7, sec. 2 of the state constitution and subd. 2 of sec. 9098, Rem. Code to the same effect. The constitutional provision is:

“The property of the United States and of the state, counties, school districts and other municipal corporations, and such other property as the legislature may by general laws provide, shall be exempt from taxation.”

Sec. 9235, Rem. Code, enacted in 1903, provides:

“The taxes assessed upon real property shall be a lien thereon from and including the first day of March in the year in which they are levied until the same are paid. * * * The taxes assessed upon personal property shall be a lien upon all the real and personal property of the person assessed from and after the day upon which such assessment is made, and no sale or transfer of either real or personal property shall in any way affect the lien for such taxes upon such property.”

As to the lien the statute lays down one rule for real property and another for personal property. That, of course, is a matter of legislative policy, unimportant to the courts except as necessity arises to keep the difference clearly in mind. That difference is pointed out in the case of *State v. Snohomish County*, 71 Wash., 320, 128 Pac., 667. It was a case in which real property was sold to the state after it had been assessed but prior to the levy for that year. It was pointed out that in giving a lien for a real estate tax the statute contemplates a levy as well as an assessment, while as to personal property only an assessment is required; and it was decided that as the levy had not been made at the time of the purchase the state took the real property free of any lien for taxes. In the opinion the court said:

"We are not blind to the fact that a contrary view finds apparent support in the decisions of this court in *Klickitat Warehouse Co. v. Klickitat County*, 42 Wash., 299, 84 Pac., 860, and *Puyallup v. Lakin*, 45 Wash., 368, 88 Pac., 578. Those cases, however, construe only that part of the lien statute relating to taxes on personal property. * * * The lien is thus by statute made complete, perfect, and enforceable prior to the levy for the current year. Every purchaser of personal property subsequent to the assessment, therefore, takes subject to a perfected and indestructible lien. No such provision for acceleration and computation is found as to real property taxes. The lien as to them is inchoate and unenforceable until the tax has been fully imposed by the levy for the current year."

The case of *Puyallup v. Lakin* just referred to was one in which the court was asked to overrule the decision in the former case of *Klickitat Warehouse Co. v. Klickitat County*, holding that the lien attaches at the date personal property is assessed, but refused to do so and specifically decided that the city of Puyallup in purchasing a water plant after it had been assessed for taxation purposes but prior to the levy that year took the same subject to the tax and that the lien was not divested by devoting the property to a public use prior to the levy, stating:

"If the property had a lien upon it when it was purchased by the municipality, the municipality like an individual would take the property subject to the lien."

It is claimed the *Puyallup* case was, in effect, overruled by *Gasaway v. Seattle*, 52 Wash., 444, 100 Pac., 991. We do not so understand. It was a case in which the plaintiff sought to foreclose certificates of delinquent taxes upon lands condemned by the city that had paid the condemnation awards into court and the property was now devoted to a public use by the city. In the course of the opinion it was said:

"In *Puyallup v. Lakin*, supra, the property was purchased under a contract. The law of eminent domain and the special statute upon which this case rests were not under consideration. The city had the right of contract and, in the absence of any law exempting it from the burdens of its trade, it was bound to meet them. The difference between that case and this is that the one rests in simple contract, the other is sustained by the sovereign power of the state. We are unwilling to extend the doctrine announced in the *Puyallup* case."

That is, there is a clear distinction between those cases where the city has acquired property by private treaty as compared with those cases where it has been acquired by condemnation—the one voluntary, the other involuntary. And the reasons for the difference are easily ascertained and shown by the decisions. Prior to the present statute

374 creating a lien for taxes upon personal property from the date of the assessment it was common knowledge that under the former statutes where personal property was listed in one year and the lien for taxes did not attach until the following year, large amounts of personal property changed hands or were removed from the county after the assessment and before the levy attached, and the taxes could not be collected. For this reason the state adopted its present policy. It is otherwise with real property, and particularly so as to the rights of all parties including a lien for taxes where the condemning party pays into court the amount of the award, whereupon a proper apportionment of the fund between the owner and any other having an interest therein or a lien thereon can be had by timely application to the court making the award. In the case of the disposition of personal property no such protection is afforded and in such case "if the property had a lien upon it when it was purchased by the municipality, the municipality like an individual would take the property subject to the lien." *Puyallup v. Lakin*, 45 Wash., 368, 88 Pac., 578; "The city had the right of contract and, in the absence of any law exempting it from the burdens of its trade, it was bound to meet them." *Gasaway v. Seattle*, 52 Wash., 444, 100 Pac., 991; "Every purchaser of personal property subsequent to the assessment, therefore, takes subject to a perfected and indestructible lien." *State v. Snohomish County*, 71 Wash., 320, 128 Pac., 667.

It is further contended that the statutes under which the state tax commissioner acted are void as to the assessment of street railway property because the subject-matter is not within the titles of the acts. The acts are Laws 1907, ch. 78, entitled "An act to provide for the assessment of the operating property of railroads" and Laws 1911, ch. 21, entitled "An act to amend section 12, ch. 78, Laws of 1907, relating to the assessment of the operating property of railroads, approved March 6, 1907, and declaring an emergency." There is a
375 mountain of authority upon this subject and scores of pages and cases are supplied us by counsel in their several briefs in this case. One can well understand how that in almost ancient days the word "railroad" did not convey to the common mind the idea of a street car drawn by a horse or a mule. But in the development of transportation facilities leading to the use of electricity and other power than steam, systems have been long since established often connecting different cities, which, together with the change by which for the purpose of equality of taxation all such operating properties are assessed by state rather than county officers, have caused the term to be gradually broadened so that ordinarily the meaning of the word is not so restricted as formerly. That such is the case is illustrated by the acts of the legislature of this state, for in 1905, ch. 81, in providing for a railroad commission the legislature found it necessary to declare that the terms road, railroad, railroad company, railroad corporation shall not apply to street railroads, electric railroads or suburban or interurban railroads. Again, Session Laws 1907, ch. 47, in granting additional authority to

cities of the first class to authorize the location, construction and operation of railroads in, along, over or across highways, streets and public places, etc., it was deemed cautious to provide therein that the act should not be construed as applying to street railroads, etc. It was this same legislature that enacted ch. 78 to provide for the assessment of operating property of railroads, wherein for the purposes of the act certain terms were defined (a common practice in modern legislation). Subd. 6 of sec. 2 declares that the word "railroad" or words "railroad company" shall be considered for all purposes of assessment and taxation as including street railways, suburban railroads or interurban railroads, etc. In this case both sides quote from the case of *Omaha Street Ry. v. Interstate Commerce Commission*, 230 U. S., 324, 57 L. Ed. 1501. In that case it was said:

376 "The appellants cite decisions from twelve states holding that in a statute the word 'railroad' does not mean 'street railroad.' The defense cite decisions to the contrary from an equal number of states. The present record discloses a similar disagreement in Federal tribunals. For not only did the commerce court and the circuit court differ, but it appears that the members of the Commission were divided on the subject when this case was decided and also when the question was first raised in *Wilson v. Rock Creek R. Co.*, 7 Inters. Com. Rep. 83."

And further in the same case it was said:

"But all the decisions hold that the meaning of the word is to be determined by construing the statute as a whole. If the scope of the act is such as to show that both classes of companies were within the legislative contemplation, then the word 'railroad' will include street railroad. On the other hand, if the act was aimed at railroads proper, then street railroads are excluded from the provisions of the statute."

The cases arise where the word or words are used in the body of statutes, and the apparent conflict is easily accounted for by reference to the rule of statutory construction requiring observance of the context of the act and the manifest intention of the legislature—that is the character of the statute and the purpose for which it was enacted. In the recent work, 22 R. C. L. 745 (railroads), it is said:

"The courts have held that the term 'railroad' is broad enough to include a street railway. In deed, it seems that the words 'railroad' and 'railway' used in statutes will be held to apply to both commercial railroads and street railways, unless there is something to indicate the particular kind intended. Of course, though, by well settled rules of statutory construction, where it is sought to bring a particular line within the statutory scope of either of these two words the controlling factor is the legislative intent. In accordance with that intent the line must be included or excluded."

The situation is illustrated by the case of Front Street Cable Co. v. Johnson, 2 Wash. 112, 25 Pac. 1084, cited and relied on by the appellants, wherein the word railroad was held not to mean street railroad, of which 1 Elliott on Railroads (2d ed.) sec. 6, p. 14, in a note, properly says it was the case of a statutory lien extended to the land, and, as the street railway company did not own the fee, this was the principal reason for holding the statute inapplicable.

Concerning the relation of the title of an act to its object
377 we have uniformly held that the title is sufficient if the object is fairly embraced therein and that it need not be a complete index thereof. In the very late case of Fisher Flouring Mills Co. v. Brown, 109 Wash. 680, 187 Pac. 399, former decisions of this court were reviewed to the effect that sound public policy and legislative convenience require a liberal construction of this provision of the constitution; that it has to do with legislative procedure and not with those guarantees of personal rights which it is the peculiar province of the courts to protect. We think that street railroads were and are fairly included in the term "railroad" as used in the titles of the acts, and certainly such was the intention of the legislature as manifested by the express language of the statutes.

In the amendatory act of 1911 it is provided "that all the operating property of street railroads shall be assessed and taxed as personal property." It is contended by the appellants that this plan violates both the constitution of the state and the Fourteenth Amendment to the constitution of the United States. The provisions of the respective constitutions invoked are those pertaining to the equal protection of the laws, a uniform and equal rate of assessment and taxation on all property in this state, and sec. 3 of art. 7 of the state constitution, which latter is as follows: .

"The legislature shall provide by general law for the assessing and levying of taxes on all corporation property as near as may be by the same methods as are provided for the assessing and levying of taxes on individual property."

That there might arise a necessity for or the advisability of some different method in detail was contemplated and provided for by the constitution. Uniformity and fairness are the results to be achieved. In this case there is no question as to the amount of the assessment. In the trial, counsel for the company said: "We

are not raising any point as to the valuation, but we are taking
378 ing the position that the property which is on the tax roll and on which we are assessed includes the value of all the operating property, real and personal." It was decided in Moeller v. Gormley, 44 Wash. 465, 87 Pac. 507, that a lease of real property for thirty years was properly taxed as real property under the then existing statute. Thereafter (1907) the law was changed and provided that all leases of real property and leasehold interests therein for a term less than the life of the holder should be assessed and taxed as personal property, and in the case of Metropolitan

Building Co. v. King County, 62 Wash. 409, 113 Pac. 1114, this court said: "We are bound by the statute, therefore, to determine the value of the leasehold as personal property." There is no vested right, either in a corporation or natural person to have property assessed in any particular way. Such matters rest entirely within the control and discretion of the legislature. *Heilig v. Puyallup*, 7 Wash. 29, 34 Pac. 164. It is a question of uniformity and equality in the classes. "The classification of property for assessment, where uniformity and equality exist in the classes, is a matter of legislative policy." *Ridpath v. Spokane County*, 23 Wash. 436, 63 Pac. 261. That there is ample reason for the classification made by the statute in this case is easily perceived. Street railways have no fee in the streets, their properties are largely personalty, while the commercial steam railways own their rights of way, and own extensive freight yards, terminal and station grounds.

That the statute providing for the assessment of the operating property, both real and personal, in solido does not violate the constitutional provision referred to is well sustained by the doctrine of *N. P. R. Co. v. State*, 84 Wash. 510, 147 Pac. 45. In fact the undisputed testimony in this case shows that this manner of assessment was specifically requested all prior years after and including 1914 by the tax agent of the traction company upon the score, 379 as stated by him, that it saved work in his office.

One of the most exhaustive and instructive cases upon this subject is *Chicago & N. W. Ry. Co. v. State*, 108 N. W. 557. It was contended in that case that the plaintiff's property was assessed upon an unjust and different basis from that of other property and particularly that of street railways and interurban railroads operated by electricity, and some other property, not belonging to railway companies, having to do with transportation of some sort, thus violating the constitutional rule of uniformity. But the supreme court of Wisconsin decided otherwise, saying: "The discretion of the legislature in this field is so broad that it is not competent for the court to mark the constitutional limitations of it other than at the farthest one might go without transcending all reasons." That case contains a lengthy discussion of the subject and references to a large number of cases of the United States supreme court to show that this class of statutes does no violence to the Fourteenth Amendment to the federal constitution, and, "in general indicate that the federal supreme court does not assume to deal with state laws, under the Fourteenth Amendment, that fall with any fairness within the field of classification." We are in accord with that view.

Lastly it is contended that even assuming the validity, in all its parts of the statutes under which the assessment was made by the state tax commissioner, nevertheless the administration of the statute by that official in the manner followed by him in making the assessment, denied to the company and the city the equal protection of the law, and deprived them of property without due process of law in contravention of the Fourteenth Amendment to the federal constitution. It has already been noticed that the assessment was made

380 prior to the date the city acquired the property. Sec. 5 of the act of 1907 provides that every railroad company shall make and file with the board of state tax commissioners, reports, showing a number of enumerated facts concerning its business, property, capital and stock. Sec. 7 provides that every such company shall be entitled on its own motion to a hearing to present evidence of any kind between the first day of April and the first day of May relating to the value of the property of the company or to the value of the general property of the state. In the present case the assessment was made on March 15 at which time the company had not filed its reports and it is claimed that such reports are mandatorily required to be before the board to enable it to make a valid assessment under the law. However, there are other provisions of the act to be considered. Sec. 5 provides that the company shall make its report between January 1 and April 1 of each year; so that this company had already had the unimproved opportunity of two and one-half months to file its report prior to the assessment being made, and two months prior to March 1—the date arbitrarily fixed by statute for the commencement of the revenue and taxation year. Sec. 7 of the act provides: "The board, on or before the first day of March and the first day of June, in each year, according to their best knowledge and judgment, shall ascertain and determine the true cash value of the property of each railroad company within this state." At the date of the act the board of tax commissioners consisted of three members, but ch. 54, Session Laws 1917, created the office of state tax commissioner and gave him power and made it his duty to exercise all the powers and perform all the duties theretofore vested in and required to be performed by the state board of tax commissioners. It therefore appears that if counsel's contention is correct that no assessment can be made by the tax commissioner until
381 after the companies choose to send in their reports at the end of the time limited therefore by the statute, it would be almost if not quite impossible for the one commissioner to complete the assessments of the vast amount of such properties in this state until long after the time fixed by the statute for the making of such assessments. The reports which may be sent in by the companies as early as January 1 must be considered as directory provisions of the statute only, so far as the power of the commissioner to make the assessment is concerned. Sec. 7 of the act provides: "Such hearing (before the commissioner) shall not impair or affect the right to a further hearing before the state board of equalization", which has power "on application or of its own motion, to correct the valuation or assessment of the property of such company, in such manner as may in its judgment make the valuation thereof just and relatively equal with the valuation of the general property of the state". There is no complaint here that the amount of the assessment was too high. The valuation of the property taken for assessment purposes was much less than the value as fixed thereafter by the private contract between the company and the city when it was purchased. That such proceedings antedating the assessment, particularly those proceedings which are to be performed by the property owner, are directory and not mandatory upon the public

authorities is well sustained by the cases. *Smith v. Newell*, 32 Wash. 369, 73 Pac. 369; *Coolidge v. Pierce County*, 28 Wash. 95, 68 Pac. 391; *Martin v. Drake*, 41 N. W. 942; *Torrey v. Milbury*, 21 Pick. 64; and 22 R. C. L. (taxation) 349. Nor does the procedure or plan of administering the law that was adopted by the commissioner in making the assessment in this case in any way violate the Fourteenth Amendment to the federal constitution or any guaranty contained in the state constitution. The procedure in no way affected the substantial justice of the tax itself, nor did it vitiate or in any manner affect the assessment. *Coolidge v. Pierce County*, *supra*. The doctrine, and cases referred to, in *Chicago v. N. W. R. Co. v. State*, *supra*, clearly applicable to the present case, meet all such contentions of the appellants. Affirmed. Mitchell, J. We concur: Parker, C. J., Mackintosh, J. Tolman, J. Main, J.

383

In Supreme Court of Washington.

[Title omitted.]

Per Curiam Opinion.

Per Curiam: This cause was reargued before the court En Banc on May 22, 1922. Deeming ourselves fully advised in the premises, and a majority of the judges being of the opinion that the cause was correctly disposed of by the decision of Department Two, reported in 17 Wash. Dec. 257, 201 Pac. 449, the judgment is affirmed for the reasons therein stated and as therein directed.

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(Copy.)

In the Supreme Court of the State of Washington, May Session,
A. D. 1922, Monday, July 10, 1922.

En Banc.

No. 16497.

[Title omitted.]

Judgment.

This cause having been heretofore submitted to the Court, upon the transcript of the record of the Superior Court of King County, and upon the argument of counsel, and the court having fully considered the same, and being fully advised in the premises, it is now, on this 10th day of July, A. D. 1922, on motion of Malcolm Douglas Esquire, of counsel for County of King et al. considered, adjudged and decreed, that the judgment of the said Superior Court be, and the same is, hereby affirmed with costs; and that the said County of King et al. have and recover of and from the said Puget Sound

Power & Light Co. and from New Amsterdam Casualty Co. of New York surety and the City of Seattle the costs of this action taxed and allowed at Ninety-Seven & 00/100 Dollars, and that execution issue therefor. And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

385 [File endorsement omitted.]

In the Supreme Court of the State of Washington.

No. 16497.

[Title omitted.]

Petition of Puget Sound Light & Power Co., City of Seattle, for Writ of Error.

[Filed Sept. 22, 1922.]

To the Honorable the Chief Justice of the Supreme Court of the State of Washington:

The petition of Puget Sound Power & Light Company (formerly known as Puget Sound Traction, Light & Power Company), plaintiff and appellant in the above entitled suit, and of The City of Seattle, cross-complainant and appellant in the above entitled suit, respectfully show:

Your petitioners are respectively the plaintiff and appellant and the cross-complainant and appellant in the above entitled suit, and the final judgment therein was rendered and filed in the above entitled court on the 10th day of July, 1922, in and by which judgment the judgment of the Superior Court of the State of Washington for King County, dismissing the complaint and cross-complaint, respectively, of your petitioners, was affirmed. Such final judgment was greatly to the prejudice of your petitioners, and such judgment and the proceedings leading thereto are erroneous in many particulars. In such suit it was contended by your petitioners that the act of the legislature of the State of Washington, approved March 6th, 1907, entitled, "An Act to provide for the assessment of the operating property of railroads," and the act of the legislature of the State of Washington, approved February 21st, 1911, entitled, "An Act to amend Section 12, Chapter 78, Session Laws of 1907, relating to the assessment of the operating property of railroads, approved March 6th, 1907, and declaring an emergency," were each in conflict with the Fourteenth Amendment to the Constitution of the United States, in that such acts, and each of them, denied the plaintiff and the cross-complainant the equal protection of the laws, and deprived the plaintiff and the cross-complainant of property without due process of law, in contravention of the Four-

teenth Amendment to the Constitution of the United States, and in such suit the plaintiff and the cross-complainant also further contended that the proviso of the last named act was likewise in conflict with such Fourteenth Amendment to the Constitution, and that such acts, and each of them, and such proviso, as applied to the plaintiff and the cross-complainant and their property, and as administered by the defendants and the cross-defendants in the above entitled suit, deprived the plaintiff and the cross-complainant of property without due process of law, and denied them the equal protection 387 of the laws, in contravention of such Fourteenth Amendment. Such acts, and each of them, together with such proviso, were null and void, and the administration and application of such acts, and each of them, and of the proviso, to the plaintiff and the cross-complainant and their property were illegal and invalid. The Superior Court of the State of Washington upheld such acts, and each of them, and decided them to be not in conflict with the Fourteenth Amendment to the Constitution of the United States, and also decided that the administration and application of such acts did not deprive the plaintiff and the cross-complainant of property without due process of law or deny them the equal protection of the laws, as was claimed by the plaintiff and the cross-complainant in such suit, and therefore the Superior Court dismissed the suit of the plaintiff and the cross-complainant, and the Supreme Court of the State of Washington affirmed the judgment of the Superior Court and thereby, by its final judgment, denied the rights, privileges and immunities claimed by the plaintiff and the cross-complainant in such suit under the Fourteenth Amendment to the Constitution of the United States.

Wherefore, in order that your petitioners may obtain relief in the premises, and have opportunity to show the errors complained of, your petitioners pray that they may be allowed a writ of error in said cause, and that said cause be transmitted to the Supreme Court of the United States, at Washington, D. C., to determine said errors, and that proper orders touching the security required of your petitioners may be made.

And your petitioners will ever pray. James B. Howe, Hugh A. Tait, E. L. Crider, N. W. Brockett, Attorneys for Plaintiff. Walter F. Meier, Corporation Counsel; Thomas J. L. Kennedy, Assistant, Attorneys for Cross-complainant. Edwin C. Ewing. Assistant.

388 [File endorsement omitted.]

In the Supreme Court of the State of Washington.

[Title omitted.]

Petition of Puget Sound Light & Power Co. for Writ of Error.

[Filed Sept. 22, 1922.]

To the Honorable the Chief Justice of the Supreme Court of the State of Washington:

The petition of Puget Sound Power & Light Company (formerly known as Puget Sound Traction, Light & Power Company), the plaintiff and appellant in the above entitled suit, respectfully shows:

Your petitioner is the plaintiff and appellant in the above entitled suit and the final judgment therein was rendered and filed in the above entitled court on the 10th day of July, 1922, in and by which judgment the judgment of the Superior Court of the State of Washington for King County, dismissing the complaint of your petitioner, was affirmed. Such final judgment was greatly to the prejudice of your petitioner and such judgment and the proceedings leading thereto are erroneous in many particulars. In such suit it was contended by the plaintiff that the act of the legislature of the State of Washington, approved March 6, 1907, entitled, "An Act to provide for the assessment of the operating property of railroads," and the act of the legislature of the State of Washington, approved February 21, 1911, entitled, "An Act to amend Section 12, Chapter 78, Session Laws of 1907, relating to the assessment of the operating
389 property of railroads, approved March 6, 1907, and declaring an emergency," were each in conflict with the Fourteenth Amendment to the Constitution of the United States, in that such acts and each of them denied the plaintiff the equal protection of the law and deprived the plaintiff of its property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States, and in such suit the plaintiff also further contended that the proviso of the last named act was likewise in conflict with such Fourteenth Amendment to the Constitution and that such acts and each of them, and such proviso, as applied to the plaintiff and its property and as administered by the defendants in the above entitled suit, deprived the plaintiff of its property without due process of law and denied it the equal protection of the law in contravention of such Fourteenth Amendment. Such acts and each of them, together with such proviso, were null and void and the administration and application of such acts and each of them and of the proviso, to the plaintiff and its property, were illegal and invalid. The Superior Court of the State of Washington upheld such acts and each of them and decided them to be not in conflict with the Fourteenth Amendment to the Constitution of the United States, and also decided that the administration and application of such acts did not

deprive the plaintiff of its property without due process of law or deny it the equal protection of the law as was claimed by the plaintiff in such suit and, therefore, the Superior Court dismissed the suit of the plaintiff and the Supreme Court of the State of Washington affirmed the judgment of the Superior Court and thereby, by its final judgment denied the rights, privileges and immunities claimed by the plaintiff in such suit under the Fourteenth Amendment to the Constitution of the United States.

Wherefore, in order that your petitioner may obtain relief in the premises and have opportunity to show the errors complained
390 of, your petitioner prays that it may be allowed a writ of error in said cause and that said cause be transmitted to the Supreme Court of the United States at Washington, to determine said errors and that proper orders touching the security required of your petitioner may be made.

And your petitioner will ever pray. James B. Howe, Hugh A. Tait, Edgar L. Crider, Norwood W. Brockett, Attorneys for Plaintiff.

391 [File endorsement omitted.]

In the Supreme Court of the State of Washington.

[Title omitted.]

Order Allowing Writ of Error to Puget Sound Light & Power Co. et al.

[Filed Sept. 22, 1922.]

Now, on this 22nd day of September, 1922, the above named plaintiff and appellant, Puget Sound Power & Light Company (formerly known as Puget Sound Traction, Light & Power Company), and the above named cross-complainant and appellant, The City of Seattle, having filed their assignment of errors in the above entitled cause, and after the filing of the same having filed their petition for
392 the allowance of a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Washington; Now, therefore, it is

Ordered by the undersigned, Chief Justice of the Supreme Court of the State of Washington, that the writ of error prayed for by the above named plaintiff and cross-complainant be, and the same is hereby, allowed; and that the plaintiff and the cross-complainant file a cost bond in the sum of One Thousand Dollars (\$1,000.00). (Signed) Emmett N. Parker, Chief Justice of the Supreme Court of the State of Washington.

393 In the Supreme Court of the State of Washington.

No. 16497.

[Title omitted.]

Order for Writ of Error to Puget Sound Light & Power Co.

[Filed Sept. 22, 1922.]

Now, on this 22 day of September, 1922, the above named plaintiff and appellant, Puget Sound Power & Light Company (formerly known as Puget Sound Traction, Light & Power Company), having filed its assignment of errors in the above entitled cause, and after the filing of the same having filed its petition for the allowance of a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Washington;

Now, therefore, it is ordered by the undersigned, Chief Justice of the Supreme Court of the State of Washington, that the writ of error prayed for by the above named plaintiff be and the same is hereby allowed, and that the plaintiff file a cost bond in the sum of five hundred dollars (\$500). (Signed) Emmett N. Parker, Chief Justice of the Supreme Court of the State of Washington.

394 [File endorsement omitted.]

In the Supreme Court of the State of Washington.

No. 16497.

[Title omitted.]

Assignment of Errors by Puget Sound Light & Power Co. et al.

[Filed Sept. 22, 1922.]

Now comes the above named plaintiff Puget Sound Power & Light Company (formerly known as Puget Sound Traction, Light & Power Company) and the above named cross-complainant The City of Seattle, and file herewith their petition for a writ of error, and say that in the record and proceedings in the above entitled suit there are manifest errors, and for the purpose of having the same reviewed in the Supreme Court of the United States make the following assignment of errors:

395 I.

The Supreme Court of the State of Washington erred in the above entitled suit in holding that the act of the legislature of the State of Washington, approved March 6th, 1907, Laws of Washington,

1907, page 132, entitled, "An Act to provide for the assessment of the operating property of railroads," was valid and not in conflict with that provision of the Fourteenth Amendment to the Constitution of the United States prohibiting the state from depriving any person of property without due process of law, and denying any person equal protection of the laws, and the Supreme Court of the State of Washington in such case erred in not sustaining the claim of the plaintiff and the cross-complainant that such act was in conflict with such provision of the Fourteenth Amendment to the Constitution of the United States, because it deprived the plaintiff and the cross-complainant of property without due process of law, and denied them the equal protection of the laws, and was therefore null and void.

II.

The Supreme Court of the State of Washington erred in holding that such act, as administered by the State of Washington and by the defendants and cross-defendants in the above entitled suit, did not, as applied to the plaintiff and the cross-complainant, deprive the plaintiff and the cross-complainant of property without due process of law and did not deny them the equal protection of the law, and was not in conflict with the Fourteenth Amendment to the Constitution of the United States, as was contended by the plaintiff and cross-complainant in such suit.

III.

The Supreme Court of the State of Washington erred in the above entitled suit in holding that the act of the legislature of the State of Washington, approved February 21st, 1911, Laws of Washington, 1911, page 62, entitled, "An Act to amend Section 396 12 of Chapter 78, Session Laws of 1907, relating to the assessment of the operating property of railroads, approved March 6th, 1907, and declaring an emergency," was valid and not in conflict with that provision of the Fourteenth Amendment to the Constitution of the United States prohibiting the state from depriving any person of property without due process of law and denying to any person the equal protection of the laws, and the Supreme Court of the State of Washington in such case erred in not sustaining the claim of the plaintiff and the cross-complainant that such act deprived the plaintiff and cross-complainant of property without due process of law and denied them the equal protection of the laws, and was in conflict with such provision of the Fourteenth Amendment to the Constitution of the United States, and was therefore null and void.

IV.

The Supreme Court of the State of Washington erred in holding that such act, as administered by the State of Washington and by the defendants and cross-defendants in the above entitled suit, did

not, as applied to the plaintiff and the cross-complainant, deprive the plaintiff and the cross-complainant of property without due process of law, and did not deny them the equal protection of the law, as was contended by the plaintiff and the cross-complainant in such suit, in contravention of the Fourteenth Amendment to the Constitution of the United States.

V.

The Supreme Court of the State of Washington erred in not sustaining the contention of the plaintiff and the cross-complainant in the above entitled suit that the proviso to Section 12 of such Act of 1907, as was made by the law of Washington in 1911, by such

397 Act of 1911, was unconstitutional and void because in conflict with the Fourteenth Amendment to the Constitution of the United States, in that such proviso deprived the plaintiff and the cross-complainant of property without due process of law and denied them the equal protection of the laws, in contravention of such Fourteenth Amendment.

VI.

The Supreme Court of the State of Washington erred in not holding that the administration of such proviso and the application thereof to the plaintiff and the cross-complainant deprived the plaintiff and the cross-complainant of property without due process of law and denied them the equal protection of the laws, in contravention of the Fourteenth Amendment to the Constitution of the United States.

VII.

The Supreme Court of the State of Washington erred in the above entitled suit in denying the claim of the plaintiff and the cross-complainant that each of such acts and the administration of each, as applied to the plaintiff and the cross-complainant and their property, singled out the plaintiff and the cross-complainant and their property from other persons and corporations in the State of Washington and all other property in the State of Washington, and applied to them and their property a rule for the assessment of the plaintiff and the cross-complainant and their property not applied to any other person or corporation, nor to the property of any other person or corporation, whereby the plaintiff and the cross-complainant and their property were subjected to greater burdens than other persons or corporations similarly situated, and their property was likewise subjected to greater burdens than the property of any other person or corporation, thereby depriving the plaintiff and the cross-complainant and their property of the equal

398 protection of the laws, and depriving the plaintiff and the cross-complainant of property without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States.

VIII.

The judgment and decree of the Supreme Court of the State of Washington, of — in the above entitled suit deprived the plaintiff and the cross-complainant of property without due process of law, and denied the plaintiff and the cross-complainant the equal protection of the laws, and denied them the benefit of the Fourteenth Amendment to the Constitution of the United States specially set up by the plaintiff and the cross-complainant in such suit.

Wherefore, the plaintiffs and the cross-complainants pray that such judgment of the Supreme Court of the State of Washington be reversed, and that the plaintiff be granted the relief prayed for in its complaint, and that the cross-complainant be granted the relief prayed for in its cross-complaint. (Signed) James B. Howe, (Signed) Hugh A. Tait, (Signed) E. L. Crider, (Signed) N. W. Brockett, Attorneys for Plaintiff. (Signed) Walter F. Meier, Corporation Counsel; (Signed) Thomas J. L. Kennedy, Assistant; (Signed) Edwin C. Ewing, Assistant, Attorneys for Cross-complainant.

399 [File endorsement omitted.]

In the Supreme Court of the State of Washington.

No. 16497.

[Title omitted.]

Assignment of Errors by Puget Sound Light & Power Co.

[Filed Sept. 22, 1922.]

Now comes the above named plaintiff, Puget Sound Power & Light Company (formerly known as Puget Sound Traction, Light & Power Company) and files herewith its petition for a writ of error and says, that in the record and proceedings in the above entitled suit there are manifest errors, and for the purpose of having the same reviewed in the Supreme Court of the United States makes the following Assignment of Errors:

I.

The Supreme Court of the State of Washington erred in the above entitled suit in holding that the act of the legislature of the State of Washington, approved March 6, 1907, Laws of Washington, 1907, page 132, entitled, "An Act to provide for the assessment of the operating property of railroads, was valid and not in conflict with that provision of the Fourteenth Amendment to the Constitution of the United States prohibiting the state from depriving any person

400 of its property without due process of law and denying the equal protection of the law, and the Supreme Court of the State of Washington in such case erred in not sustaining

the claim of the plaintiff that such act was in conflict with such provision of the Fourteenth Amendment to the Constitution of the United States because it deprived plaintiff of its property without due process of law and denied it the equal protection of the law and was, therefore, null and void.

II.

The Supreme Court of the State of Washington erred in holding that such act, as administered by the State of Washington and by the defendants in the above entitled suit did not, as applied to the plaintiff, deprive the plaintiff of its property without due process of law and did not deny it the equal protection of the law and was not in conflict with the Fourteenth Amendment to the Constitution of the United States, as was contended by the plaintiff in such suit.

III.

The Supreme Court of the State of Washington erred in the above entitled suit in holding that the act of the legislature of the State of Washington, approved February 21, 1911, Laws of Washington, 1911, page 62, entitled, "An Act to amend Section 12 of Chapter 78, Session Laws of 1907, relating to the assessment of the operating property of railroads, approved March 6, 1907, and declaring an emergency," was valid and not in conflict with that provision of the Fourteenth Amendment to the Constitution of the United States prohibiting the state from depriving any person of property without due process of law and denying the equal protection of the law, and the Supreme Court of the State of Washington in such case erred in
not sustaining the claim of the plaintiff that such act deprived
401 plaintiff of its property without due process of law and denied
it the equal protection of the law and was in conflict with
such provision of the Fourteenth Amendment to the Constitution of the United States and was, therefore, null and void.

IV.

The Supreme Court of the State of Washington erred in holding that such act, as administered by the State of Washington and by the defendants in the above entitled suit did not, as applied to the plaintiff, deprive the plaintiff of its property without due process of law and did not deny it the equal protection of the law as was contended by the plaintiff in such suit, in contravention of the Fourteenth Amendment to the Constitution of the United States.

V.

The Supreme Court of the State of Washington erred in not sustaining the contention of the plaintiff in the above entitled suit that the proviso to Section 12 of such act of 1907, as was made by the law of Washington of 1911 by such act of 1911, was unconstitutional and

void, because in conflict with the Fourteenth Amendment to the Constitution of the United States, in that such proviso deprived the plaintiff of its property without due process of law and denied it the equal protection of the law in contravention of such Fourteenth Amendment.

VI.

The Supreme Court of the State of Washington erred in not holding that the administration of such proviso and the application thereof to the plaintiff deprived the plaintiff of its property without due process of law and denied it the equal protection of the law in contravention of the Fourteenth Amendment to the Constitution of the United States.

VII.

The Supreme Court of the State of Washington erred in the above entitled suit in denying the claim of the plaintiff that each of such acts and the administration of each, as applied to the plaintiff and its property, singled out the plaintiff and its property from other persons and corporations in the State of Washington and all other property in the State of Washington, and applied to the plaintiff and its property a rule for the assessment of the plaintiff and its property not applied to any other person or corporation nor to the property of any other person or corporation, whereby the plaintiff and its property were subjected to greater burdens than other persons or corporations similarly situated, and its property was likewise subjected to greater burdens than the property of any other person or corporation, thereby depriving the plaintiff and its property of the equal protection of the law and depriving the plaintiff of its property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States.

VIII.

The judgment and decree of the Supreme Court of the State of Washington in the above entitled suit deprived the plaintiff of its property without due process of law and denied the plaintiff the equal protection of the law and denied it the benefit of the Fourteenth Amendment to the Constitution of the United States specially set up by the plaintiff in such suit.

Wherefore, plaintiff prays that such judgment of the Supreme Court of the State of Washington be reversed and that the plaintiff be granted the relief prayed for in its complaint. (Signed) James B. Howe, (Signed) Hugh A. Tait, (Signed) E. L. Crider, (Signed) N. W. Brockett, Attorneys for Plaintiff.

[File endorsement omitted.]

In the Supreme Court of the United States.

[Title omitted.]

Bond of Puget Sound Light & Power Co. on Writ of Error.

[Filed Sept. 22, 1922.]

Know all men by these presents that we, Puget Sound Power & Light Company (formerly known as Puget Sound Traction, Light & Power Company), a corporation created and existing under the laws of the State of Massachusetts, as principal, and National Surety Company, a corporation created and existing under the laws of the State of New York, incorporated for the purpose of becoming surety upon bonds and recognizances, and duly authorized to do such business in the State of Washington as surety, are held and firmly bound unto the above named defendants in the sum of five hundred dollars (\$500), to be paid to them, their successors and assigns, to which payment well and truly to be made we bind ourselves, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 22nd day of September, 1922.

Whereas, the above named plaintiff in error seeks to prosecute its writ of error from the Supreme Court of the United States to reverse the final judgment and decree rendered in the above
405 entitled suit by the Supreme Court of the State of Washington,

Now, therefore, the condition of this obligation is such, that if the above named plaintiff in error shall prosecute its said writ of error to effect, and answer all costs and damages that may be adjudged if it shall fail to make its plea good, then this obligation shall be null and void; otherwise it shall remain in full force and effect. Puget Sound Power & Light Company, By (Signed) Wm. T. McGrath, Its Vice President. Attest: (Signed) James B. Howe, Its Secretary. [Corporate Seal Puget Sound Power & Light Company, Massachusetts, 1912.] National Surety Company, By (Signed) C. B. White, Resident Vice President. Attest: (Signed) A. Garing, Resident Assistant Secretary. [Seal National Surety Company, New York, Incorporated 1897.] Approved by the undersigned this 22nd day of September, 1922. (Signed) Emmett N. Parker, Chief Justice of the Supreme Court of the State of Washington.

Writ of Error of Puget Sound Light & Power Co. et al.

[Filed Sept. 22, 1922.]

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Supreme Court of the State of Washington and the Judges thereof, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Puget Sound Power & Light Company and The City of Seattle, The County of King, Frank W. Hull, as Assessor of King County, Norman M. Wardall, as Auditor of King County, and William A. Gaines, as Treasurer of King County, wherein was drawn in question the validity of a statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened, to the great damage of the said Puget Sound Power & Light Company, as by its complaint appears. We being willing that error, if error any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning
407 & 408 the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within sixty (60) days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the 22nd day of September, in the year of our Lord, One Thousand, Nine Hundred and Twenty Two. F. M. Harshberger, Clerk of the District Court of the United States for the Western District of Washington. [Seal of the United States District Court, Western District of Washington.]

The foregoing writ of error allowed this 22nd day of September, 1922. Emmett N. Parker, Chief Justice of the Supreme Court of The State of Washington.

409 [File endorsement omitted.]

410 [File endorsement omitted.]

In the Supreme Court of the United States.

16,497.

[Title omitted.]

Bond of Puget Sound Light & Power Co. et al. on Writ of Error.

[Filed Sept. 22, 1922.]

Know all men by these presents that we, Puget Sound Power & Light Company (formerly named Puget Sound Traction, Light & Power Company), a corporation created and existing under the laws of the State of Massachusetts, and the City of Seattle, a municipal corporation of the first class of the State of Washington, as principals, and National Surety Company, a corporation created and existing under the laws of the State of New York and authorized to do business and to become a surety in the State of Washington, as surety, are held and firmly bound unto The County of King, Frank W. Hull, as Assessor of King County, Norman M. Wardall, as Auditor of King County, and William A. Gaines, as Treasurer of King County, in the sum of One Thousand Dollars (\$1,000), to be paid to them, their successors and assigns, to which payment, well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

In witness whereof, the said principals and said surety, respectively, have caused these presents to be executed by their proper
411 officers or officials, thereunto duly authorized, and have caused their respective corporate seals to be hereunto fixed, this 21st day of September, 1922.

Whereas, the above named principals seek to prosecute their writ of error from the Supreme Court of the United States to reverse the final judgment and decree rendered in the above entitled suit by the Supreme Court of the State of Washington.

Now, therefore, the condition of this obligation is such that if the said principals shall prosecute their said writ of error to effect and answer all costs and damages that may be adjudged if they fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and effect. Puget Sound Power & Light Company, By (Signed) Alton W. Leonard, Its President. Attest: James B. Howe, Its Secretary. [Corporate Seal 1912.] Puget Sound Power & Light Company, Massachusetts. National Surety Company, By ———, Resident Vice President. Attest: A. Gar-
ing, Resident Assistant Secretary. [Seal National Surety Company,

New York, Incorporated 1897.] The City of Seattle, By 411½ (Signed) Edwin J. Brown, Mayor. Attest: (Signed) H. W. Carroll, City Comptroller and ex-officio City Clerk. [Corporate Seal, The City of Seattle, Washington.] National Surety Company, By C. B. White, Resident Vice President. Attest: C. Garing, Resident Assistant Secretary. [Seal National Surety Company, New York, Incorporated 1897.]

The foregoing bond is approved, both as to sufficiency and form, this 22nd day of September, 1922. (Signed) Emmett N. Parker, Chief Justice of the Supreme Court of the State of Washington.

412

[File endorsement omitted.]

Writ of Error of Puget Sound Light & Power Co.

[Filed Sept. 22, 1922.]

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable The Supreme Court of the State of Washington and the Judges thereof, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in said court before you, or some of you, between Puget Sound Power & Light Company, as plaintiff, and The City of Seattle, The County of King, Frank W. Hull, as Assessor of King County, Norman M. Wardall, as Auditor of King County, and William A. Gaines, as Treasurer of King County, defendants, and between the City of Seattle, a municipal corporation, cross-complainant, and Puget Sound Power & Light Company, The County of King, Frank W. Hull, as Assessor of King County, Norman M. Wardall, as Auditor of King County, and William A. Gaines, as Treasurer of King County, cross-defendants, your court being the highest court of said state having jurisdiction to render judgment in the case; there was drawn in question the validity of a statute of, or an authority exercised under, the United States, and the decision was against their validity, and there was drawn in question the validity of a statute of, or an authority exercised under, said state, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of their validity, and there was drawn in question the construction of a clause of the Constitution or of a treaty or statute of, or commission held under, the United States, and the decision was against the title, right, privilege or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute or commission, and there being manifest error in said decision, greatly to the damage of Puget Sound Power & Light Company and The City of Seattle, the petitioners in error, and we being willing that, if there is error, it should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, we do

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herefore command you, if judgment be therein given, that, under the seal of your court, you send the record and proceedings had in said cause, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in Washington within sixty (60) days from the date hereof, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what, of right and according to the laws and customs of the United States, should be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the 22nd day of September, in the year of our Lord, One Thousand, Nine Hundred Twenty-two. F. M. Harshberger, Clerk of the District Court of the United States for the 414-416 Western District of Washington. [Seal of the United States District Court, Western District of Washington.]

The foregoing writ of error allowed this 22nd day of September, 1922. Emmett N. Parker, Chief Justice of the Supreme Court of the State of Washington.

417

Citation and Service.

[Filed Oct. 5, 1922.]

UNITED STATES OF AMERICA, *ss.*:

The President of the United States of America to the County of King, Frank W. Hull, as Assessor of King County; Norman M. Wardall, as Auditor of King County, and William A. Gaines, as Treasurer of King County, Greeting:

You, and each of you, are hereby cited and admonished to be and appear at and before the Supreme Court of the United States, at Washington, District of Columbia, within sixty (60) days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Washington, wherein Puget Sound Power & Light Company and The City of Seattle are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Chief Justice of the Supreme Court of the State of Washington, this 22d day of September, 1922. Emmett N. Parker, Chief Justice of the Supreme Court of the State of Washington. Attest: Fred S. Guyot, Dep. Clerk of the Supreme Court of the State of Washington. [Seal of the Supreme Court, State of Washington.]

[File endorsement omitted.]

418 We, the attorneys of record for the defendants in error in the above entitled suit, hereby acknowledge due service of the above citation this — day of September, 1922. — — —, Attorneys for the County of King, Frank W. Hull, as Assessor of King County; Norman M. Wardall, as Auditor of King County, and William A. Gaines, as Treasurer of King County.

419-421

Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA,

Western District of Washington, ss:

I hereby certify and return that I served the annexed Citation on the therein-named Malcolm Douglas and Howard A. Hanson, attorneys for defendants in error King County et al. by handing to and leaving a true and correct copy thereof with Malcolm Douglas and Howard A. Hanson personally at Seattle in said District on the 26th day of September, A. D. 1922. E. B. Benn, U. S. Marshal, by R. H. Humber, Special Deputy.

422

Citation and Service.

[Filed Oct. 5, 1922.]

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the City of Seattle, the County of King, Frank W. Hull, as Assessor of King County; Norman M. Wardall, as Auditor of King County, and William A. Gaines, as Treasurer of King County, Greeting:

You and each of you are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, District of Columbia, within sixty (60) days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Washington, wherein Puget Sound Power & Light Company is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Chief Justice of the Supreme Court of the State of Washington, this 22nd day of September, 1922. Emmett N. Parker, Chief Justice of the Supreme Court of the State of Washington. Attest: Fred S. Guyot, Dep. Clerk of the Supreme Court of the State of Washington. [Seal of the Supreme Court, State of Washington.]

[File endorsement omitted.]

423 We, the attorneys of record for the defendants in error in the above entitled suit, hereby acknowledge due service of the above Citation, this 25 day of September, 1922. Walter F. Meier, Thomas J. L. Kennedy, Edwin C. Ewing, Attorneys for The City of Seattle. ———, Attorneys for the County of King, Frank W. Hull, as Assessor of King County; Norman M. Wardall, as Auditor of King County, and William A. Gaines, as Treasurer of King County.

424 & 425

Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA,

Western District of Washington, ss:

I hereby certify and return that I served the annexed Citation on the therein-named Malcolm Douglas and Howard A. Hanson attorneys for the defendants in error King County et al. by handing to and leaving a true and correct copy thereof with Malcolm Douglas and Howard A. Hanson personally at Seattle in said District on the 26th day of September, A. D. 1922. E. B. Benn, U. S. Marshal, by R. H. Humber, Special Deputy.

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[Endorsed:] (Original.) Puget Sound Traction, Light & Power Company, Plaintiff in Error, v. The City of Seattle et al., Defendants in Error. Citation. James B. Howe, Hugh A. Tait, Edgar L. Crider, Norwood W. Brockett, Attorneys for Plaintiff in Error, 860 Stuart Building, Seattle, Washington.

427 In the Supreme Court of the State of Washington.

[Title omitted.]

Clerk's Certificate.

I, C. S. Reinhart, Clerk of the Supreme Court of the State of Washington, do hereby certify that the above and foregoing is a full, true and correct transcript of the record in the above entitled cause, and that in pursuance of the writs of error heretofore filed herein I now transmit the same together with the original writs and the original citations to the Supreme Court of the United States.

In testimony whereof, I have hereunto set my hand and affixed the Seal of said Court, this 5th day of October, 1922. C. S. Reinhart, Clerk. [Seal of the Supreme Court, State of Washington.]

428 In the Supreme Court of the United States, October Term,
1922.

No. 653.

[Title omitted.]

Stipulation as to Parts of Record to be Printed.

[Filed Mar. 7, 1923.]

It is hereby stipulated and agreed between the undersigned counsel, respectively, for the above named plaintiffs in error and the above named defendants in error, that in printing the record in the above entitled case the Clerk of the Supreme Court shall not print the following:

1. Pages 25 to 139, both inclusive, of Plaintiff's "Exhibit A," which Exhibit A is entitled, "Description and Inventory
429 & 430 of Street Railway Properties of Puget Sound Traction, Light & Power Company and the Ordinances governing their sale to The City of Seattle," the omitted portions to be considered by the Court as part of Exhibit A if deemed material by the Court;

2. All of the abstract of record, because the substance thereof fully appears otherwise in the printed record.

It is further stipulated that the remainder of the record shall be printed by the Clerk of the Supreme Court.

Dated February 23, 1923. James B. Howe, Counsel for Puget Sound Power & Light Company, Plaintiff in Error. Walter F. Meier, Thomas J. L. Kennedy, Corp. Counsel; Edwin C. Ewing, Assistant, Counsel for the City of Seattle, Plaintiff in Error. Malcolm Douglas, Howard W. Hanson, Counsel for Defendants in Error.

431 [File endorsement omitted.]

432 [File endorsement omitted.]

Endorsed on cover: File No. 29,203. Washington Supreme Court. Term No. 653. Puget Sound Power & Light Company and The City of Seattle, plaintiffs in error, vs. The County of King, Frank W. Hull, as assessor of King County; Norman M. Wardall, as auditor of King County, et al. Filed October 19th, 1922. File No. 29,203.

SECRET

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No. 653

IN THE

Supreme Court of the United States

October Term, 1922

PUGET SOUND POWER & LIGHT COMPANY (formerly named Puget Sound Traction, Light & Power Company, and THE CITY OF SEATTLE,

Plaintiffs in Error

vs.

THE COUNTY OF KING, FRANK W. HULL, as Assessor of King County, NORMAN M. WARDALL, as Auditor of King County, and WILLIAM A. GAINES, as Treasurer of King County,

Defendants in Error

*Writ of Error to the Supreme Court
of the State of Washington*

BRIEF OF PLAINTIFFS IN ERROR

(Note—Italics in this brief are counsels' unless
otherwise stated)

STATEMENT

This case is here upon writ of error to the Supreme Court of the State of Washington. (R. 188, 190.)

Plaintiffs in error are Puget Sound Power & Light Company and the City of Seattle, hereinafter respectively called the "company" and the "city," when referred to separately, and "plaintiffs" when referred to jointly. Defendants in error are hereinafter called "defendants."

The suit was instituted by the company in the Superior Court of the State of Washington to have cancelled as a cloud upon title certain state, county and city taxes and to enjoin defendants from further clouding title and from enforcing the collection of such taxes amounting to the principal sum of \$401,017.76. (R. 1-7.)

The city was made a defendant. It filed a cross-complaint praying the same relief as prayed by the company. (R. 8-15.)

It is now claimed, and upon the record in the state court was claimed, by the plaintiffs:

1. That the company having contracted to sell and the city having contracted to buy the property attempted to be assessed and taxed, and such contract having been consummated at a date prior to the time when the property was subject to assessment and taxation, it was exempt from taxation under Article VII, section 2, of the Constitution of

the State of Washington exempting from taxation property of the United States, of the state and of municipal corporations and, therefore, the attempted assessment and taxation of the property and the attempt to charge other property of the company with the obligation to pay such tax was illegal and void.

2. That the Act of February 21, 1911, Laws of Washington, 1911, page 62, amending section 12 of the Act of March 6, 1907, entitled,

"An Act to provide for the assessment of the operating property of railroads, Laws of Washington, page 132,"

under which the assessment and taxes in controversy were imposed was, and is, in conflict with and void under the Fourteenth Amendment to the Constitution of the United States:

(a) Because it denied plaintiffs the equal protection of the laws.

(b) Because, as enforced, it deprived, and if further enforced, would further deprive them of their property without due process of law.

(c) Because although the Constitution of Washington, Article VII, section 3, required all corporation property to be assessed and taxed by the same

methods, as near as may be, as the property of individuals, and the law of March 6, 1907, page 132, classified real estate of railroads, including street railroads, as real estate, for assessment and taxation and as the real estate of other corporations and of individuals was classified and assessed and taxed, real estate owned in fee by street railroad companies was by the Act of February 21, 1911, Laws of 1911, page 62, arbitrarily and without any reasonable justification invidiously singled out and classified as personal property, assessed and taxed as such and thereby denied the privileges and immunities of real estate taxed as real estate, and subjected to greater and heavier burdens than those imposed upon the real estate of other corporations and of individuals.

3. Because the Act of 1907, as amended by the Act of 1911, not only upon its face was in conflict with the Fourteenth Amendment to the Constitution of the United States, but as construed and enforced further violated the Fourteenth Amendment by arbitrarily singling out the plaintiffs and a portion of their property from all other owners of similar property and from all other similar property throughout the state and subjected it and them, and it and them only, to an illusory classification, intentionally and necessarily resulting in invidious taxation.

4. Because the attempted assessment was made without notice, without jurisdiction and without due process of law, and so blended real estate and personal property together in a lump assessment as to deny to plaintiffs and their real estate the privileges and immunities allowed to other real estate and its owners, thereby violating the Fourteenth Amendment to the Constitution of the United States.

The decree of the superior court overruled and denied all of these claims and dismissed the suit with costs. (R. 37-56.) On appeal therefrom to the supreme court of the state the same grounds were relied upon both on the original hearing and the hearing *en banc*, but were by the decree of the Supreme Court likewise overruled and denied and the decree of the Superior Court affirmed. (R. 52-56, 167-177.) To reverse such decree of the Supreme Court of the state for so holding the writ of error was sued out. (R. 177-191.)



SPECIFICATION OF ERRORS

The following are the errors specified and relied upon for the reversal of the decree of the Supreme Court of the State of Washington entered in this suit (R. 37-55, 180-186) :

I

The Act of February 21, 1911, Laws of Washington, 1911, page 62, amending section 12 of the Act of March 6, 1907, entitled:

“An Act to provide for the assessment of the operating property of railroads,” (Laws of Washington, 1907, page 62)

is upon its face in conflict with the Fourteenth Amendment to the Constitution of the United States, in that it denies to plaintiffs the equal protection of the laws and deprives them of their property without due process of law as claimed by the plaintiffs, and there is error in the decree of the Supreme Court of the state in overruling and denying such claim and in sustaining such act.

II

Such Act of March 6, 1907, as amended by such Act of February 21, 1911, and as construed and enforced by the State of Washington, was and is in conflict with the Fourteenth Amendment to the Constitution of the United States, in that as construed and enforced it denies to the plaintiffs the equal protection of the laws and deprives them of their property without due process of law as claimed by the plaintiffs, and

there is error in the decree of the Supreme Court of the state in overruling and denying such claim and in holding such act valid as amended, construed and enforced.

III

The attempted assessment upon which the taxes in controversy were levied was void because made without notice, without jurisdiction and without due process of law and in a manner denying plaintiffs the equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States as claimed by the plaintiffs, and there is error in the decree of the Supreme Court of the state in overruling and denying such claim and in holding such assessment and the taxes levied thereon valid.

IV

The attempted assessment of the real estate of plaintiffs owned in fee, together with their personal property, all as personal property in a lump sum, and the levy of taxes on such assessment, so that taxes upon real estate and upon personal property could not be separated and so that taxes, if valid, could not be paid without paying invalid taxes, rendered the entire assessment and all of the taxes levied thereon illegal, and the enforcement of the same would, as claimed by the plaintiffs, deny them the equal protection of the laws and deprive them of their property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States, and there is error in the decree of the Supreme Court of the state in overruling and denying such claim and in holding such assessment and taxes valid.

FACTS OF THE CASE

The facts upon which the foregoing specifications are based are as follows:

The company is a Massachusetts corporation. Since 1912 it has done an electric light, power and street railway business in the State of Washington. The city is and for a number of years prior to 1918 was a municipal corporation under the laws of Washington, with power to acquire, own and operate street railroads. In 1918 the company owned and operated street railroad lines in Seattle, King County, and in Whatcom County, both in the State of Washington. In December, 1918, the city enacted Ordinances 39025 and 39069, authorizing the city to acquire the street railroad property of the company in Seattle and to enter into a contract for its purchase. The ordinances were duly approved and were in effect on the 10th day of February, 1919, when the city and company entered into the contract so authorized. Ordinance 39025 and the inventory referred to in Ordinance 39069 described fully and specifically the lots, blocks and acres of land to be conveyed by the company to the city, as well as the personal property included in the contract. (R. 103-150.)

The contract contained the following provision:

"That state, county and municipal taxes levied against the property for the year 1919 shall be paid before the same shall become delinquent by the respective parties hereto in amounts proportional to the respective periods of time that said parties are respectively in possession of said property during the year 1919." (R. 14.)

The contract was the subject of litigation instituted by certain taxpayers to enjoin the city and the company from consummating the contract, because it was claimed by such taxpayers that the city had no power to enter into the contract without the approval of the voters of the city, and it had not been submitted to them. The Supreme Court of the state on the 5th day of March, 1919, rendered its decision in such taxpayers' suit, holding that the city was acting within its power and proceeding in accordance with the law authorizing it to acquire the property and issue its bonds in payment.

Twichell et al. v. The City of Seattle et al.,
106 Wash. 32.

The contract was consummated on the 31st day of March, 1919, by the delivery of the deed to the city and the bonds to the company. (R. 4, 17, 138-149.)

Article VII, section 2, of the Constitution of Washington, declared:

"The property of the United States and of the state, counties, school districts and other *municipal corporations*, and such other property as the legislature may by general laws provide, shall be exempt from *taxation*."

The statutory exemption is contained in Laws of Washington, 1915, pages 358, 359, and section 11104, Remington's Compiled Statutes of Washington, 1922, and is as follows:

"All property described in this section, to the extent herein limited, shall be exempt from taxation, that is to say

"2nd. All property, whether real or personal belonging exclusively to any school district, county, municipal corporation, state or to the United States."

The Supreme Court of the state prior to 1919 had decided that the lien of a tax on *personal property* attached when the personal property *was assessed* by the assessor, that is, when the property was listed *and the assessor had placed a value upon it*, although the tax levied upon such assessment was not levied until months thereafter.

Klickitat Warehouse Co. v. Klickitat County,
42 Wash. 299.

The Supreme Court had also held that where a municipal corporation purchased *personal property* which had already *been assessed*, it took the property subject to the lien of the *tax subsequently levied*, although in such decision the constitutional exemption from taxation was not specifically mentioned.

Puyallup v. Lakin, 45 Wash. 368. (Decided January, 1907, eight years before the enactment of law of 1915, Laws 1915, p. 358.)

Doubt has been cast upon this decision:

State v. Snohomish County, 71 Wash. 320.

Gasaway v. Seattle, 52 Wash. 444.

Foster v. Duluth, 120 Minn. 484.

Raymond v. King County, 117 Wash. 343. (Opinion of court *en banc* filed same day as opinion of department in case at bar, 117 Wash. 351.)

The Supreme Court had further decided that as to *real estate no tax LIEN was created by ASSESSMENT only*, and if the title to real estate vested in the state *after assessment, but before a tax had been levied*, the *real estate was exempt from taxation*, holding that if any time before its final consummation the process of making an assessment and

levy upon real estate in all its various steps, the title to the property vested in the state (or any of its political subdivisions) the constitutional exemption immediately became operative, the development of liability for taxes being arrested the moment public ownership attached.

State v. Snohomish County, 71 Wash. 320.
(Citing *Van Brocklin v. Tennessee*, 117 U. S. 151, 173, 174; *Gachet v. New Orleans*, 52 La. Ann. 813.)

The State Tax Commissioner was made the successor to the State Tax Commission and was by reason of such succession charged with the duties formerly exercised by the State Tax Commission. (Laws, 1917, p. 210.)

In March, 1919, the State Tax Commissioner, because of the existence of the contract between the city and the company hereinbefore mentioned, and because he had been informed that the contract would probably be consummated before *April 1st* attempted to assess on the *15th day of March, 1919*, the property included in the contract, although the report of the company, *which he was required to consider in making an assessment* of the property of the company, *had not been filed*, the time for filing it *had not expired*, and although no assessment

of street railroad property since the enactment of the Act of 1907 *had ever been made* earlier than *May 31st* in any previous year, or in the year 1919, or since, up to the time of the trial of this suit. (R. 75-92, 161.)

Before making the assessment the commissioner wrote to the Attorney General of the State the following letter (Pltffs' Ex. "H," 161):

"March 8, 1919.

"Honorable L. L. Thompson,
Attorney General,
Olympia, Washington.

"Dear Sir: This office desires your opinion in regard to the question presented by the following state of facts:

"This office under the law, makes an assessment against the property of the Puget Sound Traction, Light & Power Company. The City of Seattle has contracted for the purchase of the street railway lines and street railway property and equipment of the Puget Sound Traction, Light & Power Company. The Supreme Court of this state has upheld the validity of the bonds to be issued for the purchase of this property, and the deal will probably be completed within a short time, and the title will pass.

"I am advised by the city attorney that the details of the transaction will in all probability be completed *before the 1st of April.*

"The ordinance authorizing the purchase of the lines provides that 'State, county and municipal taxes levied against the property for the year 1919 shall be paid before the same shall become delinquent by the respective parties hereto in amounts proportional to the respective periods of time that the said parties are respectively in possession of said property during the year 1919.'

"Section 9152 of R. & B. Code provides: '... All operating property of street railways shall be assessed and taxed as personal property.'

"Section 9101 of R. & B. Code provides: '... All personal property in this state subject to taxation shall be listed and assessed every year with reference to its value on the 1st day of March preceding the assessment.'

"Section 9235 of R. & B. Code provides: '... The taxes assessed upon personal property shall be a lien upon all the real and personal property of the person assessed from and after the date upon which such assessment is made and no sale or transfer of either real or personal property shall in any way affect the lien for such taxes upon such property.'

"Section 9147 of R. & B. Code contains an evident error but we believe that the statute is meant to read that between the first day of March and the first day of June, the Tax Commissioner shall ascertain and determine the value of each railroad company in the state. The term railroad company under subdivision six of section 9142 is defined to include property of street railway companies.

"Section 9145 of R. & B. Code provides that 'Every railroad company operating in this state shall between the first day of January and the *first day of April* in each year make and file with the commissioner' a report containing the information such as the commissioner may require.

"Section 9147 also provides that every company shall be entitled on its own motion to hearing and to present evidence before such commissioner at any time *between the first day of April* and the first day of May relating to the value of the property of such company. This section also provides, 'The value of property of railroads for assessment shall be made as of the same time and in like manner as the value of the general property of the state is ascertained and determined.'

"The question here presented is as follows:

"1. In view of the fact that *the report* upon which the *assessment* of the tax commissioner is *based* is not required to be filed until March 30th (March 31st) and in view of the fact that a company is entitled *under the statute* to a hearing during the month of *April*, when after March 1st can a valid assessment be made upon which the lien of the tax will attach.

"2. If such assessment can not be completed before title passes to the City of Seattle, should any assessment be made for the year 1919, against this property. In this connection it will be noted that a private owner will have been in possession of the property for a portion of the year 1919.

"I might add that it *has always been* the practice of this office to make the assessments on this class of property date *as of May 31st*.

"Respectfully yours,

R. R. JACKSON,
State Tax Commissioner.
CRJ—S."

No answer was received by him and on the 15th of March, 1919, he made the following attempted assessment (R. 167):

"ELECTRIC RAILWAYS

Name	1919 real property.	1919 personal property.	1919 total.
1. Puget Sound Traction, Light & Power Com- pany, King County ---		\$12,000,000	\$12,000,000

"(This assessment made *March 15, 1919*, and covers the street railway system property and equipment in the City of Seattle, described in inventory filed in the office of the Comptroller of the City of Seattle, December 30, 1918, bearing Comptroller's file number 72055, excepting from said inventory, however, certain non-operating real estate, a list of which is on file in the office of the State Tax Commissioner.)"

On the 15th of March, 1919, he wrote the following letters (Ex. "F," R. 158, 159):

"March 15, 1919.

"Mr. A. W. Leonard,
President Puget Sound Traction,
Light & Power Co.,
Seattle, Washington.

"Dear Sir: You are advised that a valuation of \$12,000,000 has been placed by the State Tax Commissioner, upon the operating property of the Puget Sound Traction, Light & Power Company, for assessment purposes for the year 1919.

"These figures represent the 100 per cent value and will be subject to the ratio of assessed to actual value as determined by the State Board of Equalization for the county in which the road operates.

"You are also advised that this valuation is subject to change by the State Board of Equalization, which meets on September 2, 1919. You will be notified at a later date of the exact day upon which your road may be heard.

"I am sending this letter to you for the reason that I am not certain as to whether Mr. Dexter or Mr. Brockett is your tax agent at this time.

"Very truly yours,

STATE TAX COMMISSIONER,
CRJ. S."

"March 15, 1919.

"Mr. Frank W. Hull,
County Assessor, Seattle, Wash.

"Dear Sir: This office has this day made a valuation upon the street railway operating property of the Puget Sound Traction, Light & Power Company, for the year 1919.

"This assessment covers only the street railway operating property and you will proceed to value and assess all property of the Puget Sound Traction, Light & Power Company heretofore valued and assessed by this office with the exception of that property described in a certain inventory filed in the office of the City Comptroller on the 30th day of December, 1919, and bearing Comptroller's file No. 72055.

"Very truly yours,

STATE TAX COMMISSIONER,
C. R. J. S."

On March 18, 1919, he wrote the following letter (R. 159):

"March 18, 1919.

"Mr. A. W. Leonard,
President Puget Sound Traction,
Light & Power Co.,
Seattle, Washington.

"Dear Sir: Supplementing my letter of March 15th, wherein I advised you that a valuation of

\$12,000,000 had been placed by the State Tax Commissioner upon the operating property of the Puget Sound Traction, Light & Power Company for assessment purposes for the year 1919, I beg to advise that this assessment covers only the street railway operating property of your company *located in King County*, and that a *separate assessment* will be made by this office upon the property of the Puget Sound Traction, Light & Power Company in *Whatcom County*.

"Very truly yours,

STATE TAX COMMISSIONER.
CRJ. S."

Although section 8 of the Act of 1907 before mentioned provided:

"The board shall prepare assessment rolls and place thereon, after the name of each railroad company assessed, the general description of the property of such railroad which shall be deemed and held to include the *entire property* and franchises of such railroad company within the state" And

"When the value of the property of the railroad company within this state shall have been ascertained and determined the amount thereof shall be entered upon said assessment rolls opposite the name of the company and shall constitute the value of the *entire property* of such railroad company within this state for the levy of taxes thereon, sub-

ject to revision and correction by the State Board of Equalization as hereinafter provided."

the attempted assessment was only of the specific real and personal property included in the contract between the city and the company and did not include any of the operating street railroad property of the company in Whatcom County. (R. 159.)

The obvious purpose of making the attempted assessment at the time and in the manner it was made was to prevent the company from selling the property included in the contract to the city and the city from acquiring the property free from any lien for taxes. (R. 86.)

Under the decision of the Supreme Court of the state in *State v. Snohomish County*, 71 Wash. 320, *supra*, if the sale to the city of the lots, blocks and acres of land should be consummated before the final completion of a tax levy thereon in all its steps, they would be exempt from taxation if assessed as real estate.

Under the decision in *Puyallup v. Lakin*, 45 Wash. 368, the city would acquire the personal property free from the lien of any tax if at the time of its acquisition no valid assessment of the property had been made.

The Tax Commissioner, therefore, singled out a certain portion of the property of the company from all similar property in the state for invidious assessment and taxation and applied a method never before nor since applied to similar property or the owners of such property. (R. 78-84, 85, 92.)

On the trial the Tax Commissioner testified:

"Q. The only street railway property which you claim was assessed on or prior to the 15th of March, 1919, *is the property that was conveyed to the city?*

"A. Yes. (R. 78.)

"Q. But you did undertake to assess, and you intended to assess *all of the real estate* included in the *inventory* that you had previously assessed as operating property?

"A. Yes.

"Q. And all of that you assessed, all of the operating property, *real and personal, in a lump?*

"A. That was—

"Q. That is what you did?

"A. Yes, *that is what I did.*

"Q. Did you, Mr. Jackson, assess the operating property *of any street railway in this state*, other than this property, during the month of *March, 1919?*

"A. Now, Mr. Howe, as you ask that question, I would say, *no.*" (R. 79.)

Examined by Mr. Evans:

"Q. And this is the roll that you have produced here in court, Defendants' Exhibit No. 1?

"A. Yes.

"Q. As I understood your testimony, as a matter of fact you made *no assessments* upon operating property of *any other company* except the property in suit, during the month of *March, 1919*?

"A. No.

"Q. And any assessment that was made upon other operating property was made, of course, subsequent to the *31st of March, 1919*?

"A. It was made during the months of *April and May.*" (R. 85.)

"Q. I say, the reason you did not make the assessment during March was because you wanted to accord the companies an opportunity to be heard, to file any protest that the statute provides for?

"A. I would not state that as the reason.

"Q. Now, you know that under the state law the company—

"A. I would say this, Mr. Evans, in answer to your question, that *this was the first time* that a question had ever come up *where there was any incentive*, or, I mean, any idea of making an assessment earlier than the first of March, or, that is, *earlier than the 31st of May.*

"Q. Earlier than the 31st of May, and the 31st of May was usually the date when you made the—

"A. As long as I have been on the commission there has never been any question involved in an assessment which would speed us up, that is, where we wanted to make an assessment out of turn.

"Q. So you made them, and the practice was to make them about the 31st of May?

"A. To make them during the months of *April and May* and give out the figures on the 31st of May for all companies *at one time*. They were *made* during the months of *April and May*." (R. 86.)

The effect of the statute as amended, construed and enforced, was to single out and impose upon certain specific property of the plaintiffs a tax lien not imposed upon any similar property in the state but imposed only upon the plaintiffs and their property and solely for the reason that plaintiffs had entered into and were about to consummate the contract of sale which had been held valid by the Supreme Court of the state.



ARGUMENT

SPECIFICATION OF ERROR I

The Act of February 21, 1911, amending the Act of March 6, 1907, whereby real estate owned in fee by a street railroad company was singled out from the real estate of other corporations and of individuals and assessed and taxed as personal property, and thereby denied the privileges and immunities accorded by the Constitution and the statutes of the state to such other real estate and its owners, is in conflict with the Fourteenth Amendment:

1. It makes an arbitrary and illusory classification.

By such classification real estate owned in fee and used in street railroad operation and the owner of such real estate are denied the following privileges and immunities granted and allowed to other real estate and its owners.

1. The right of sale free from lien for taxes *at any time before the completion of the levy* of a tax on such real estate.

2. The right to pay the tax thereon on or before the 15th day of March in each year and receive a *discount* of three per cent.

3. The right to *prevent delinquency* by paying one-half of the tax before the *first day of June* and

the other half before the *first day of December* in each year.

4. In case of delinquency, to remove such delinquency upon paying the tax with interest at the rate of *twelve per cent per annum* instead of at the rate of *fifteen per cent per annum*.

5. The right of *redemption for three years* after delinquency and thereafter until the entry of a decree of court foreclosing the tax lien and the issuance of a deed pursuant to such decree.

Street railroad real estate and its owners are subjected to the following burdens to which other real estate and its owners are not subjected:

1. The obligation to pay the tax *without discount* on or before the *15th day of March* in each year or become delinquent.

2. In case of delinquency to pay interest at the rate of *fifteen per cent per annum* instead of *twelve per cent per annum*.

3. To a sale of the property on *ten days' notice* after delinquency without any decree of court and without any right of redemption.

That these discriminations exist is demonstrated by the following quotations from the statutes (Sec-

tion 11252 Remington's Compiled Statutes of Washington, 1922) :

"Section 9219. The county treasurer shall be the receiver and collector of all taxes extended upon the tax-books of the county, whether levied for state, county, school, bridge, road, municipal or other purposes, and also of all fines, forfeitures or penalties received by any person or officer for the use of his county. All taxes upon *real property* made payable by the provisions of this act shall be due and payable to the treasurer as aforesaid on or before the *thirty-first day of May in each year*, after which date they shall become delinquent, and interest at the rate of *twelve per cent per annum* shall be charged upon such unpaid taxes from the date of delinquency until paid: Provided, however, when the total amount of tax payable by one person is two dollars or more, then *if one-half of such taxes be paid on or before said thirty-first day of May*, then the *time of payment of the remainder* thereof shall be *extended* and said *remainder* shall be *due and payable on or before the thirtieth day of November following*; but if the remaining one-half of such taxes be not paid on or before the thirtieth day of November, then such remaining one-half shall be delinquent, and interest at the rate of *twelve per cent per annum* shall be charged thereon from the first day of June preceding until paid: Provided further, there shall be an allowance of *three per cent rebate* to all payers of taxes who shall pay the *taxes on real property* in one payment and in full *on or before the fifteenth day of March* next prior to the date of delinquency. All rebates allowed un-

der this section shall be charged to the county current expense fund and all collections from penalties and interest on delinquent taxes shall be credited to the current expense fund." (Section 1, Laws of Washington, 1917, p. 582.)

A recent construction and application of this section was made in the following case:

Northern Pacific R. Co. v. Franklin County,
118 Wash. 117.

Section 2 of the same act, so far as is pertinent, is as follows:

" On the first business day *after the expiration* of the eleven months after the taxes charged against any *real property are delinquent*, the board of county commissioners shall determine whether it will be for the best interest of the county to carry or further carry the delinquent taxes upon the books of the county or to permit certificates of delinquency for the same to be sold to any person, and should it be deemed advisable to permit the sale of certificates of delinquency they shall pass a resolution to that effect and publish a copy of the same in the next issue of the official newspaper of the county and on the first day of the month next following, the treasurer shall have the right, and it shall be his duty, upon demand and payment of the taxes and interest, to make out and issue a certificate or certificates of delinquency against such property and such certificate or certificates shall be numbered : Provided further, that all certificates of delinquency sold to persons shall be registered by the county

treasurer in a book provided for that purpose, in which shall also be recorded the name and address of the purchaser of each certificate of delinquency. Thereafter, at any time before *the expiration of three years from the original date of delinquency* of any tax included in a certificate of delinquency issued to a person, the owner of the property may pay to the county treasurer the amount of taxes due for one or more subsequent years, with delinquent interest, if any, to the date of payment, and if the same shall have been paid by the holder of the certificates of delinquency the county treasurer shall forward the amount of payment or payments made by such owner to the holder of the certificate of delinquency at his registered address. The payment of taxes for such subsequent year or years shall thereby extend the time of the foreclosure of the particular certificate of delinquency one year for each subsequent year's taxes so paid." (Remington's Compiled Statutes of Washington, 1922, Sec. 11290.)

Section 11292 of Remington's Compiled Statutes of Washington, 1922, is as follows:

"Any time after the expiration of three years from the original date of delinquency of any tax included in a certificate of delinquency, the holder of any certificate of delinquency may give notice to the owner of the property described in such certificate that he will apply to the Superior Court of the county in which such property is situated, for a judgment foreclosing the lien against the property mentioned herein."

Section 11258, Remington & Ballinger's Compiled Statutes, 1922.

"On the first Monday in February succeeding the levy of taxes, the county treasurer shall proceed to collect all personal property taxes. He shall give notice by mail to all persons charged with personal property taxes, and if such taxes are not paid on or before the fifteenth day of March of such year, he shall forthwith proceed to collect the same. In the event that he is unable to collect the same in due course, he shall prepare papers in distraint, which shall contain a description of the personal property, the amount of the tax, the amount of accrued interest at the rate of fifteen per cent per annum from March 15th, and the name of the owner or reputed owner, and shall file the same with the county sheriff, who shall immediately without demand or notice distraint sufficient goods and chattels belonging to the person charged with such taxes to pay the same with interest at the rate of fifteen (15) per cent per annum from the fifteenth day of March of such year, together with all accruing costs, and shall immediately proceed to advertise the same by posting written notices in three public places in the county in which such property has been levied upon, one of which places shall be at the county courthouse, such notices to state the time when

and the place where such property will be sold. If the taxes for which such property is distrained and the interest and cost accruing thereon are not paid before the date appointed for such sale, which shall not be less than ten (10) days after the taking of such property, such sheriff shall proceed to sell such property at public auction, or so much thereof as shall be sufficient to pay such taxes with interest and costs, and shall pay to the treasurer the money so collected at such sale, and if there be any overplus of money arising from the sale of any personal property, the treasurer shall immediately pay such overplus to the owner of the property so sold, or to his legal representative: * * *

Constitution of Washington, Article I, section 12, declares:

"No law shall be passed granting to any citizen, class of citizens or corporation, other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens or corporations."

Malin v. Benthien, 114 Wash. 533, 539.

State v. Robinson Co., 84 Wash. 246.

In re Camp, 38 Wash. 393.

Article VII, section 2, Constitution of Washington, declares:

"The legislature shall provide by law a uniform and equal rate of assessment and taxation on all property in the state according to its value in money, and shall prescribe such regulation by general law as shall secure a just valuation for taxation of all property, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property."

Section 3 of the same article provides:

"The legislature shall provide by general law for the assessing and levying of taxes on all corporation property as near as may be by the same methods as are provided for the assessing and levying of taxes on individual property."

This court has expressed its opinion as to the meaning of that language.

Johnson v. Wells Fargo Company, 239 U. S. 234, 237, 238, 242.

The language of this court in that case was as follows:

"The constitution of the State of South Dakota, as the same was in force at the time of these assessments, provided (Article XI, Sec. 2), as follows:

" 'All taxes to be raised in this state shall be uniform on all real and personal property, according to its value in money, to be ascertained by such rules of appraisement and assessment as may be prescribed by the legislature by general law, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property. And the legislature shall provide by general law for the assessing and levying of taxes on all corporation property, as near as may be, by the same methods as are provided for assessing and levying of taxes on individual property.'

"From an analysis of this section, it appears that taxes to be valid must be uniform upon all real and personal property; that the legislation providing for the assessment and collection of taxes must be such that every person and corporation may be taxed in proportion to the value of his, her or its property; and that the general laws which provide for the assessing of taxes on corporation property, shall be as near as may be, by the same methods as

are provided for the assessing and levying of taxes on individual property.

“The stringent provisions of the constitution of South Dakota, then in force, required the adoption of a rule of valuation, as near as might be, of like character in assessing individual and corporate property in the state, and here, the record shows, the valuation of the property of the express companies was based principally upon their gross incomes, determined by the method already described. Such administration of the statute would be illegal, although the law upon its face be unobjectionable. *Reagan v. Farmers' Loan & Trust Co.*, 154 U. S. 362, 390.”

To say that the owners of two pieces of real estate owned in fee are given equal protection of the laws when the property of one is so assessed that by paying the tax thereon by *March 15* he receives a discount of three per cent, or if not so paid he is extended credit upon one-half until *June* and the other one-half until *December*, with the right in case of delinquency to pay twelve per cent interest instead of fifteen per cent interest, and with the further *right for more than three years to redeem from such delinquency*, while the other is denied all of those rights and his real estate made subject to sale on *ten days' notice* without any *right of redemption*, is to state a proposition which carries its

own refutation. The courts have so decided as the following quotations demonstrate:

"Defendant contends that chapter 64 is unconstitutional because it provides that certain taxes assessed thereunder must all be paid *or or before March 30*, while all other taxes, even certain taxes assessed under this same law, can be paid *one-half on April first* and the other one-half on or before *October thirty-first*. This provision requiring payment on an earlier date *is one which from its nature can only result in inequality*—the use of money being a thing of value. There is a fundamental difference between laws under which lack of uniformity and equality may arise owing to defects in human judgment and laws which absolutely contravene the provisions of the constitution by themselves creating a lack of uniformity and equality. The mere fact that such lack of uniformity or equality may be slight can not be considered in support of *a law so inherently bad*.

"We are, therefore, of the opinion that those provisions of chapter 64 providing for fixing the rate of levy upon defendant's property, providing for the division among the local taxing districts of certain of the taxes collected from defendant's property *and providing for a time for payment of its taxes other than that fixed for the payment of other taxes, are all unconstitutional*."

Ewert v. Taylor, 38 So. Dak. 124, 160 N. W. 797, 804, 807.

"Laws, 1913, c. 367, relating to the taxation of mineral rights is unconstitutional as violating the

guaranties of the state and federal constitutions as to *equal protection of the laws*, by putting the special class of *real estate by itself* and for public revenue purposes treating it and the owners thereof *materially different than other forms of real estate and owners thereof are treated.*" (Syllabus.)

State ex rel. Owen, Attorney General v. Donald, Secretary of State, 161 Wis. 188, 153 N. W. 238.

In the opinion in the case last above cited, the court said:

"Does the quoted legislative enactment violate the guaranties of *equal protection of the laws* contained in the state and *federal constitution* by putting the particular species of real estate in a *class by itself* and treating the same for public revenue purposes and the owners thereof *materially different than other forms of real estate* and the *owners thereof are treated*? Though the constitutionality of the act in question was challenged by defendant on several grounds, only those covered by the stated question were considered in deciding the case. It is the opinion of the court, the Chief Justice, and Justices Siebecker and Kerwin dissenting, that the classification made by such act can not be justified under even the very liberal rules on that subject and, hence, the question must be answered in the affirmative, requiring the defendant's motion to quash the writ of mandamus, upon the ground that *such act is unconstitutional, to be granted.*"

In the concurring opinion of Mr. Justice Timlin, he said:

"I do not rest this case solely on the question of the validity of the statute under section 1, Article VIII, Wisconsin Constitution. I also consider its validity under the Fourteenth Amendment to the paramount Federal Constitution:

"(a) Because it has been customary in this court to consider these constitutional requirements together

"(b) Because if it conflicts with the paramount Constitution it must fall, notwithstanding it might be thought capable of enforcement under our State Constitution.

"(c) It might be well to rest it wholly on the Federal Constitution. I would have been willing to so rest it and say nothing about the State Constitution out of deference to the minority opinion and to facilitate the review of the decision in the Supreme Court of the United States by those hereafter claiming title under this statute. The arbitrary imposition of unequal burdens upon persons between whom no substantial distinction germane to the purposes and objects of the law can be made, is forbidden by the State and *Federal Constitutions* in matters of taxation, as well as in other matters. It having been decided by this court that the requirement that the rule of taxation be uniform is not limited to the mere rate of taxation, *I think it follows that the statute in question transgresses this requirement as well as the Fourteenth Amendment to the*

United States Constitution. 'The rule of taxation' does not, I think extend to all steps in enforcing collection of the tax, but it does extend to those important steps which are essential parts of the tax proceedings. Collection by demand or collection by enforcement process are such and it would be intolerable, for illustration, that *a certain favored class* should have *six months* in which to pay their taxes *while others* must pay in *six days*.

"(b) This statute, I think, also aims to cut off at the sale the *right of redemption* of the owner of the *kind of property discriminated against*, while leaving a *three years' right of redemption* to all other owners of other estates in the same tract of land. True, the redemption must be made upon penalty, paying fifteen per cent interest, but he would be a bold innovator in the law who would hold that the equity of redemption is not a matter of great consequence. Besides this, he would be much at variance with facts and would ignore the ordinary practices prevailing in real life. But, just as there was no legal foundation for classification or discrimination in the clause which deprived the owners of the ores and minerals of the advantage of competitive bidding, so there is no legal foundation for this discrimination against him with reference to the time or manner of redemption. *In this latter respect the act is void under both the State and Federal Constitutions.*

"(c) I consider the act invalid, also, in that it attempts to confer upon a stranger to the title of the ores and minerals the privilege of redemption or acquisition which it denies to the delinquent owner.

This is a clear case of denying the equal protection of the law. It would be the legal equivalent of enacting that one tenant in common might acquire title to the whole under a tax sale, while the other tenant in common could not."

"Under the Constitution which requires taxes to be levied and collected under general laws, the legislature has no power to impose a pecuniary penalty for nonpayment upon one class of taxpayers exclusively, leaving all other classes exempt from any penalty whatever. Nor can the legislature subject *one class of taxpayers* to execution for taxes on the *first of October*, when the great mass of taxpayers are exempt until the 20th of December." (Syllabus by court.)

Atlanta & F. R. R. Co. v. Wright, 87 Ga. 487.

In the opinion the court said:

"We think the trial judge erred in holding that the second ground of the affidavit of illegality presented no defense to the execution. The same paragraph of the Constitution above quoted declares the taxes shall be levied and collected under general laws. We think that this means that the laws for the levying and collecting of taxes shall be substantially the same for all classes of property; that if a pecuniary penalty is put upon delinquent taxpayers it shall affect all alike; that the legislature can not impose one penalty upon a railroad company for its failure to pay taxes upon its property and another penalty upon an individual for his failure to pay

taxes upon his property. If any pecuniary penalty for failure to pay taxes upon property is exacted there must be such a penalty upon all taxpayers who fail to pay. The general law requires that each and every taxpayer shall pay his taxes by the 20th of December in each year and in case of default it is made the duty of the tax collector to issue execution. (Acts, 1885, p. 66.) The general law, therefore, being that taxes shall be paid by the 20th of December, and if not paid that an execution shall issue upon that day, the legislature had no power to prescribe for railroad companies exclusively a different day of payment and a different day for the issuance of the execution and a penalty not imposed upon other classes of taxpayers."

"By section 21 the first day of July is made the day of delinquency as to taxes on all other kinds of property. The *constitutional* objection suggested is that an *unreasonable discrimination* is made in favor of the holders of shares of stock in corporations by giving to these persons *until the first of September*. We think this objection is well taken."

Malone v. Williams, 118 Tenn. 390, 103 S. W. 798, 807.

In the case at bar the equal protection of the laws was therefore denied to the plaintiffs by an arbitrary selection of them and their real estate for hostile discrimination.

"The equal protection of the laws is a pledge of the protection of equal laws."

Yick Wo v. Hopkins, 118 U. S. 356, 369.

"The inhibition of the amendment that no state shall deprive any person within its jurisdiction of the equal protection of the laws was designed to prevent any person *or class of persons* from being singled out as a special subject for discriminating and hostile legislation."

Pembina Mining Company v. Pennsylvania,
125 U. S. 181, 188.

"Arbitrary selection can never be justified by *calling* it classification. The equal protection demanded by the Fourteenth Amendment forbids this."

Gulf, Colorado & Santa Fe Railroad v. Ellis,
165 U. S. 150, 159.

"It is apparent that the *mere fact* of classification is not sufficient to relieve a statute from the reach of the *equality clause* of the Fourteenth Amendment and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and *is not a mere arbitrary selection.*"

Gulf, Colorado & Santa Fe Railroad v. Ellis,
165 U. S. 150, 165.

"While reasonable classification is permitted without doing violence to the equal protection of the

laws, such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the things in respect to which such classification is imposed and classification can not be arbitrarily made without any substantial basis. Arbitrary selection, it has been said, can not be justified by calling it classification."

Southern Railway Company v. Greene, 216 U. S. 400, 417.

Greene v. Louisville & Interurban R. Co., 244 U. S. 499, 516, 518.

Taylor v. Louisville & N. R. Co., 88 Fed. 350, 364, 365.

"The guaranty was aimed at undue favor and individual or class privilege on the one hand and at hostile discrimination or the oppression of inequality on the other. *It sought an equality of treatment of all persons even though all enjoyed the protection of due process.*"

Truax v. Corrigan, 257 U. S. 312.

Sioux City Bridge Company v. Dakota County, 260 U. S. —; Ad. Op. 67 L. Ed. 220.

"In cases brought to this court from state courts for review on the ground that a federal right set up in the state court has been wrongly denied and in which the state court has put its decision on a finding that the asserted *federal right* has no basis in point of fact or has been waived or lost, this court, as an incident of its power to determine whether a federal right has been wrongly denied,

may go behind the finding to see whether it is *without substantial support*. If the rule *were otherwise* it almost always would be within the power of a state court *practically* to prevent a review here."

Truax v. Corrigan, 257 U. S. 312.

"In view of these decisions and the grounds upon which they proceed, it is clear that in a case like the present, where the issue is whether a state statute in its application to facts which are set out in detail , violates the *Federal Constitution*, *this court must analyze the facts as averred* and draw *its own inferences* as to their ultimate effect, and is not bound by the conclusion of the state Supreme Court in this regard."

Truax v. Corrigan, 257 U. S. 312.

Ward v. Love County, 253 U. S. 17, 22.

Terre Haute etc. R. Co. v. Indiana, 194 U. S. 579, 589.

Union Pacific v. Public Service Comm., 248 U. S. 67, 69.

"The Constitution deals with substance, not shadows. Its inhibition was levelled at the thing, not the name. . . . If the inhibition can be evaded by the form of the enactment, its insertion in the fundamental law was a vain and futile proceeding."

Cummings v. State of Missouri, 4 Wall. 277, 325.

Shaffer v. Carter, 252 U. S. 37, 55.

"In making the assessment upon the property in question, upon the *use* to which it was being put, the assessor proceeded upon a fundamentally wrong basis."

Samish Gun Club v. Skagit County, 118 Wash. 578, 580.

"No authority has been called to our attention which holds that property itself may be so classified that it shall bear a burden greater than that of other property of like value within the same assessment jurisdiction. If, then, the exactions from estates required by this statute amount to property taxes, we think the statute can not be upheld."

State ex rel. Nettleton v. Case, 39 Wash. 177, 181.

"There is neither uniformity nor equality where all kinds of property save one are, intentionally and in pursuance of a fixed and definite policy, assessed at less than forty per cent of its full and fair value, whilst that class of property is intentionally assessed at sixty per cent of such value. The facts pleaded do not show an erroneous valuation or a difference in judgment as to a correct measure of value, but rather an intentional and arbitrary discrimination against a particular class of property. Such an arbitrary policy is vicious in principle, violative of the constitution and operates as a constructive fraud upon the rights of the property holder discriminated against."

Spokane & Eastern Trust Company v. Spokane County, 70 Wash. 48, 52.

Raymond v. Traction Co., 207 U. S. 20, 37.

Sioux City Bridge Co. v. Dakota County,
260 U. S. —, Law Ed. 67, Ad. Op. p. 220.

“Class legislation discriminating against some
and favoring others is prohibited.”

Barbier v. Connolly, 113 U. S. 27, 32.

Truax v. Raich, 239 U. S. 33.

*Atchison, Topeka & Santa Fe Railroad Com-
pany v. Vosburg*, 238 U. S. 56.

Connolly v. Union Sewer Pipe Co., 184 U. S.
540.

Cotting v. Kansas City Stock Yards Co., 183
U. S. 79.

Missouri v. Lewis, 101 U. S. 22.

Magoun v. Illinois Trust & Savings Bank,
170 U. S. 283.

To assess two pieces of property of the same kind,
such as real estate owned in fee and of equal value,
in such manner that though the tax on both be
paid on the same day, the owner of one piece may
extinguish the tax by paying three per cent less than
the owner of the other, simply because of the use
to which the property is put, is just as invidious a
method of assessment as one assessing one piece
three per cent more than the other because of such
use.

"The protection of property implies the protection of its value."

Ames v. Union Pacific Railroad Company,
64 Fed. 165, 177.

To take from one piece of property some of its value by the method of assessing it, while allowing another piece of property of exactly the same kind and value to suffer no such forced appropriation, is not only to deny the equal protection of the laws to the property and its owner discriminated against, but also to deprive such owner of property without due process of law.

"The classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. . . . Nevertheless, a discriminatory tax law can not be sustained against the complaint of a party aggrieved if the classification appear to be altogether illusory."

Royster Guano Co. v. Virginia, 253 U. S.
412, 415.

Pennsylvania Coal Co. v. Mahon, 260 U. S.
—, Ad. Op. 67, L. Ed. 154.

SPECIFICATION OF ERROR II

The Act of 1907 as amended by the Act of 1911, as construed and enforced, violates the Fourteenth Amendment.

1. It denies the plaintiffs the equal protection of the laws.

The Tax Commissioner singled out from all of the operating street railroad property in the state a certain portion of plaintiffs' property, real and personal, and attempted to impose upon it a lien for taxes by assessing it before the report of the company, which he was required to consider in making the assessment, was filed, and before it was required to be filed, and at an earlier date than any other similar property in that year or in any year prior thereto or since, had been or was assessed. This was done because the contract of purchase and sale between the city and the company was to be consummated before the first of April, 1919, and if no assessment should be made until after the first of April, 1919, as in the case of all other similar property, this property would not then be subject to assessment or taxation because owned by a municipal corporation prior to assessment.

The letter of the State Tax Commissioner to the Attorney General of the state hereinbefore quoted, and the testimony of the State Tax Commissioner also hereinbefore quoted, demonstrate the correctness of this statement.

It thus appears that the property of the plaintiffs and the plaintiffs were singled out from all other similar property and the owners of such property throughout the State of Washington, for the sole reason that plaintiffs had entered into and were about to consummate a contract which the Supreme Court of the state had upheld as valid, and were subjected to hostile and discriminatory taxation to which neither any similar property nor the owners of such property were subjected.

The language of this court, when the contention was made that the action of the American Sugar Company had made the enactment of a special statute necessary, is applicable to this case:

"The answer shows that the plaintiff is the only one to whom the act could apply and that the statute was passed in view of plaintiff's conduct to meet it. It is upon the assumption of the latter fact that the argument is pressed that the plaintiff has no standing in equity since it made the legislation necessary. If the connection were admitted *it would be so*

much the worse for the constitutionality of the act."

McFarland v. American Sugar Co., 241 U. S. 79, 85.

In *Detroit, Grand Haven & Milwaukee Railway Company v. Fuller*, 205 Fed. 86, 89, the court said:

"The first ground upon which Act No. 95 is attacked by the complainants is that it constitutes class legislation, so-called, in contravention of the Fourteenth Amendment to the Federal Constitution.

"Act No. 95, in seeking to impose a tax only upon the stock, bonds and other evidences of indebtedness of specially chartered railway companies, is in the opinion of the court *an arbitrary singling out* of the Detroit, Grand Haven & Milwaukee Railway Company stockholders, bondholders and other creditors. No real and substantial distinction upon which to base a classification for the purpose of taxation exists between the stockholders, bondholders and other creditors of that company and the stockholders, bondholders and others creditors of other Michigan railway companies. The court is, therefore, of the opinion that Act No. 95, *in thus singling out* the stockholders, bondholders and other creditors of the Detroit, Grand Haven & Milwaukee Railway Company for the purpose of the *tax thereby imposed*, does constitute *class legislation in contravention of the Fourteenth Amendment*, and that said act and taxes assessed thereunder are thereby rendered *void* and of no effect. See *N. P. R. Co. v. Walker*, (C. C.) 47 Fed. 681; *Railway v. Taylor*, (C. C.) 86 Fed. 168; *Railroad Company v. Pennsylvania*, 134 U. S.

232, 10 Sup. Ct. 533, 33 L. Ed. 892; *Railway v. Ellis*, 165 U. S. 150, 17 Sup. Ct. 255, 41 L. Ed. 666; *Cotting v. Stockyards Company*, 183 U. S. 79, 22 Sup. Ct. 30, 46 L. Ed. 92; *Railway Co. v. Greene*, 216 U. S. 400, 30 Sup. Ct. 287, 54 L. Ed. 536, 17 Ann. Cas. 1247."

"A statute would not be constitutional which should select particular individuals from a class or locality and subject them to *peculiar rules* or impose upon them *special obligations or burdens* from which *others in the same class or locality are exempt*. Everyone has a right to demand that he be governed by *general rules* and a special statute which without his consent *singles his case out* as one to be regulated by a different law from that which is applied in all similar cases, would not be *legitimate legislation*, but would be such an *arbitrary mandate* as is *not within* the province of *free government*."

Cooley Constitutional Limitations, 391.

State v. Julow, (quoting Cooley), 129 Mo. 163.

If in the case at bar an act of the legislature had singled out the plaintiffs and their property by name and description because they had entered into a contract for the purchase and sale of their property and subjected them and their property to the imposition of a tax lien before the time otherwise fixed

by law, and for special and invidious treatment, no one would contend that such enactment did not violate the Fourteenth Amendment. When, therefore, the state officials construed the statute so as to make it apply to the plaintiffs and their property and to it and them only, and enforced it only as to it and them such construction and enforcement brought the statute within the prohibition of the Fourteenth Amendment as effectually as if such construction were written in the statute.

McFarland v. American Sugar Co., 241 U. S. 79, 85.

Yick Wo v. Hopkins, 118 U. S. 356, 373.

Detroit, Grand Haven & Milwaukee Railway Co. v. Fuller, 205 Fed. 86, 89.

FURTHER DISCRIMINATION

Construction of Railroad Law of 1907 with Telegraph Law of 1907 as Parts of One Law

On the 6th of March, 1907, Laws of Washington, 1907, pages 132, 140, the railroad act before mentioned was approved. For the convenience of the court the act is set out in full in the appendix to this brief, together with the telegraph act enacted at the same session and the Act of 1911 amending

the railroad act of 1907. The following are quotations from the railroad act, which we place before the court for the purpose of comparing them with the telegraph act and for the purpose of demonstrating that the railroad act as amended by the Law of 1911, and as construed and enforced by the state officials, denied the plaintiffs the equal protection of the laws in contravention of the Fourteenth Amendment:

"Section 1. That the State Board of Tax Commissioners shall make an annual assessment of the operating property of all railroad companies within this state, for the purpose of levying and collecting taxes as hereinafter provided.

"Section 2.

"(6) The word 'railroad' or words 'railroad company,' wherever they occur in this act, shall be considered, for all purposes of assessment and taxation, as including every kind of street railway, suburban railroad, or interurban railroad, person, firm, association, company or corporation, whether its line of railroad be maintained either at the surface, or above or below the surface of the earth, or by whatever power its vehicles are transported.

"Section 5. Every railroad company, operating in this state, shall, between the first day of January and the *first day of April* in each year, under the oath of the president or other chief officer, and the secretary, treasurer, auditor or superintendent, of

such company, make and file with the board, in such form as the board may prescribe, reports containing the following facts:

“(13) Such general description of the *real property* of the railroad company, owned or operated in the State of Washington, as would be sufficient in a conveyance thereof, under a *judicial decree directing a sale for taxes*, to vest in the grantee all title and interest in and to said property.

“(14) A like description of the *personal property*, including moneys and credits, held by the company as a whole system and also the part thereof apportioned to the system in this state.

“(18) The entire gross earnings of such company in the State of Washington, for each and every month, for each calendar year, ending on the 31st day of December.

“(20) Such other facts and information as said board may require, in the form of returns prescribed by it. *Blanks* for making the *above reports* shall be furnished to *such companies* by said board except for the copies of the reports required under the provisions of subdivision nineteen of this section. *In case any company refuses or neglects to make the reports provided for by this act*, or refuses or neglects to furnish any information requested, the board *shall inform itself the best it may* on the matters necessary to be known, in order to discharge its duties with respect to the *valuation and assessment* of the property of *such company*.

“Section 6. If any railroad company or its officers or agents, shall refuse or neglect to make any

reports required by this act, or said board, or shall refuse or neglect to permit an inspection and examination of its records, books, accounts or papers when requested by said board, or shall refuse or neglect to appear before the board in obedience to a summons, such company shall be estopped to question or impeach the action or determinations of the board upon any grounds not affecting the substantial justice of the tax.

“Section 7. The board, on or before the first day of March and the first day of June, in each year, according to their best knowledge and judgment, shall ascertain and determine the true cash value of the property of each railroad company within this state. Every such company shall be entitled on its own motion, to a hearing and to present evidence before such board, at any time *between the first day of April and the first day of May*, relating to the value of the property of such company, or to the value of the general property in the state. On request in writing for such hearing or presentation, the board shall appoint a time and place therefor, within the period aforesaid, the same to be conducted in such manner as the board shall direct. Such hearing shall not impair or affect the right to a further hearing before the State Board of Equalization, as hereinafter provided. The value of property of railroads for assessment shall be made as of the same time, and in like manner, as the value of the general property of the state, is ascertained and determined.

“Section 8. The board shall prepare assessment rolls and place thereon, after the name of each rail-

road company assessed, the *general description* of the property of such railroad, which shall include its *real estate*, right-of-way, tracks, stations, terminals, appurtenances, rolling stock, equipment, franchises and all other real and personal property of said company, which shall be deemed and held to include *the entire property* and franchises of such railroad company *within the state*, and all title and interest therein. For the purpose of determining the true cash value of the property of each company, *the board may*, if deemed necessary, view and inspect the property of such company, and *shall consider the reports filed in compliance with this act*, and the reports and returns of the company filed in the office of any officer of this state, *and such other evidence* or information as may have been taken or obtained bearing upon the value of the property of the railroad company assessed. In case of railroad companies which own or operate railroads lying partly within and partly without the state, the said board shall only value and assess the property within this state. In determining the value of the portion within the state, the board shall take into consideration the value of the entire system, the mileage of the whole system, and of the part within this state, together with such other information, facts and circumstances as will enable the board to make a substantially just and correct determination. When the value of the property of the railroad company within this state shall have been ascertained and determined, the amount thereof shall be entered upon said assessment rolls, opposite the name of the company, *and shall be and constitute the value of the entire property of such*

railroad company within this state, for the levy of taxes thereon, subject to revision and correction by the State Board of Equalization as hereinafter provided. Upon the completion of such assessment, the board shall give notice by mail to each railroad company assessed, of the amount of its assessment as entered upon such rolls.

“Section 12. In making the assessments of the operating property of railroads, and in the apportionment of the values and the taxation thereof, as hereinbefore provided, *all land occupied and claimed exclusively as the right-of-way for railroads, with all the tracks, and substructures and superstructures which support the same, together with all side tracks, second tracks, turn-outs, station houses, depots, round-houses, machine shops, or other buildings belonging to the road, used in the operation thereof, without separating the same into land and improvements, shall be assessed and taxed as real property.* And the rolling stock and other movable property belonging to any railroad company or corporation shall be considered personal property and shall be assessed and taxed as such.”

On the 12th of March, 1907, Laws of Washington, 1907, pages 243, 252, there was approved an act entitled:

“An act to provide for the assessment of the property of telegraph companies.”

Section 5 is as follows:

“Every company operating a telegraph line or lines, in this state, shall annually between the first

day of January and the *first day of April* in each year, under the oath of the president or other chief officer and the secretary, treasurer, auditor or superintendent of such company, make and file with the board in such form as said board may prescribe, reports containing the following facts: (The statement required is substantially the same as that required of railroad companies.)

“(13) Such general description of the real estate of the company owned or operated in Washington as would be sufficient in a conveyance thereof, under a judicial decree, directing a sale for taxes to vest in the grantee all title and interest in and to the said property.

“(14) A like description of the personal property, including moneys and credits held by the company as a whole system and the part thereof apportioned to the line in Washington.

“(23) Any company, association or corporation owning all or a majority of the capital stock of the company operating in this state or having practical control of any such company may be required to make report of such facts and information specified in this section as may be deemed necessary by the board to a correct valuation and assessment of the property of such operating company.
In case any company refuses or neglects to make the reports required by this act, or refuses or neglects to furnish any information requested, the board shall inform itself the best it may on the matters necessary to be known in order to discharge its duties with respect to the valuation and assessment of the property of such company.

"Section 8. The board on or between the *first day of April* and the first day of July in each year, according to their best knowledge and judgment, shall ascertain and determine the true cash value of the property of each company within the state. For the purpose of determining the true cash value of the property of each company, appearing on the assessment roll, the board may, if deemed necessary, view and inspect the property of such company and shall consider the reports filed in compliance with this act."

It will be seen from the foregoing quotations from the two acts that railroads and street railroads under the railroad act and telegraph companies under the telegraph act were granted the right to file the reports setting out the description of their property and giving the details required by section 5 of each act, at any time prior to the *first day of April* in each year. Under each act the penalty for failing or refusing to file such report by the first day of April was that the board might,

"Inform itself the best it may on the matters necessary to be known in order to discharge its duties with respect to the valuation and assessment of the property of such company."

In each case it was provided that for the purpose of determining the true cash value of the property of each company the board,

"Shall consider the reports filed in compliance with this act and the reports and returns of the company filed in the office of any officer of this state and such other information as may have been taken or obtained bearing upon the value of the property assessed."

Section 7 of the railroad act reads as follows:

"The board on or before the first day of March and the first day of June, in each year according to their best knowledge and judgment, shall ascertain and determine the true cash value of the property of each railroad company within this state. Every such company shall be entitled on its own motion to a hearing and to present evidence before such board at any time between the first day of April and the first day of May relating to the value of the property of such company or to the value of the general property in the state."

Section 8 of the telegraph act reads as follows:

"The board on or between the first day of April and the first day of July, in each year, according to their best knowledge and judgment, shall ascertain and determine the true cash value of the property of each company within the state."

It will thus be seen from the foregoing quotations that while railroad companies, including street railroad companies, are given the right to file their reports at any time prior to the first day of *April*

and that the board was required to consider such reports, and it was only in the event that the companies failed or refused to file such reports that the board had the right to inform itself the best it might on the matters necessary to be known in order to make an assessment of the property, and that telegraph companies were given the same rights at the same times and the same consequences were attached to their failure to file such reports, the taxing officials of the state and the Supreme Court of the state, by reason of the ambiguity contained in section 7 of the railroad act, denied all of the rights conferred upon the railroads and street railroads under the other sections of that act which were the same as the rights specifically preserved by section 8 of the telegraph act by providing for the assessment of telegraph property on or between the *first day of April* and the first day of July in each year.

“If there is doubt as to the meaning of a statute such as this under consideration, the construction must be strict and the doubt must be resolved in favor of the citizen upon whom the burden is sought to be imposed. *Treat v. White*, 181 U. S. 264.”

Rockefeller v. O'Brien, 224 Fed. 541.

Shwab v. Doyle, 258 U. S. 529.

The two acts relating to the assessment and taxation of the property of railroads, including street railroads, and telegraph companies having been passed at the same session and within a week of each other, must be considered together as though they were parts of one act. The effect of the construction of the railroad act by the state officials and the enforcement of that act as so construed resulted in the privileges and immunities granted to all other property and to the owners of such other property, including telegraph companies, being denied to street railroad companies and operating street railroad property. This construction and enforcement of the act violate the Fourteenth Amendment to the Constitution of the United States.

In *Royster Guano Co. v. Virginia*, 253 U. S. 412, heretofore cited, this court had before it the question whether one of two statutes of Virginia providing for the taxation of the income of Virginia corporations violated the Fourteenth Amendment to the Constitution of the United States, and said:

"The statute thus assailed imposes an income tax of one per centum upon the aggregate amount of income upon each person or corporation,' subject to specified deductions and exemptions, including in income from 'all profits from earnings of any partnership or business done in or out of

Virginia,' and also 'all other gains and profits derived from any source whatever.' Under this act as applied to plaintiff in error by the state officers, whose action was sustained by the court of last resort, a tax was imposed upon the income derived from its plants without the state as well as from that within the state. At the same time, chapter 495, Laws, 1916 (p. 830), approved on the same day was in force.

"It is not disputed that under this act corporations created by and existing under the laws of Virginia and doing business in other states, but none within the state except the holding of stockholders' meetings, are exempted from the payment of any income tax. Of course, these two statutes—c. 472 and c. 495—must be considered together as parts of one and the same law, and by their combined effect, if the judgment under review be affirmed, plaintiff in error would be required to pay a tax upon its income derived from business done without as well as from that done within the state, while other corporations owing existence to the same laws and simultaneously deriving income from business done without the state but none from business within it, are exempt from taxation." It is unnecessary to say that the 'equal protection of the laws' required by the Fourteenth Amendment does not prevent the states from resorting to classification for the purposes of legislation. . . . But the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be

treated alike Nevertheless, a discriminatory tax law can not be sustained against the complaint of a party aggrieved if the classification appear to be altogether illusory It is obvious that the ground of difference upon which the discrimination is rested has no fair or substantial relation to the proper object sought to be accomplished by the legislation. It follows that it is arbitrary in effect and none the less because it is probable that the unequal operation of the taxing system was due to inadvertence rather than design. We are constrained to hold that so far as c. 472 of the laws of 1916 operated to impose upon plaintiff in error a tax upon income derived from business transacted and property located without the state, because of the mere circumstance that it also derived income from business transacted and property located within the state, while at the same time under c. 495 other corporations deriving their existence and powers from the laws of the same state and receiving income from business transacted and property located without the state, but none from sources within the state, were exempted from income taxes, there was an arbitrary discrimination amounting to a denial to plaintiff in error of the equal protection of the laws within the meaning of the Fourteenth Amendment."

This case was cited and approved in *Kansas City Southern Railway Company v. Road Improvement District No. 6*, 256 U. S. 658, 661, where this court said:

“Obviously, the railroad companies have not been treated like individual owners and we think the discrimination so palpable and arbitrary as to amount to a denial of the equal protection of the law. Classification, of course, is permissible, but we can find no adequate reason for what has been attempted in the present case. *Royster Guano Co. v. Virginia*, 253 U. S. 412, 415.”

In the case at bar, not only were the plaintiffs and their property singled out and treated differently from all other owners of street railroad operating property, but, although required by the Act of 1907 to be treated in respect to their real estate exactly as railroad companies were treated, they were by the discriminating Act of 1911 deprived of all of the privileges and immunities incident to the ownership of real estate enjoyed by railroad companies, by corporations generally and by individuals, and subjected to burdens not imposed upon similar property when owned by other corporations and by individuals.

That such discrimination constituted arbitrary selection forbidden by the Fourteenth Amendment clearly appears from the decisions of this court hereinbefore cited.

2. The plaintiffs were denied due process of law by the construction and enforcement of the Act of 1907 as amended by the Act of 1911, and if such enforcement should be further permitted they would be further deprived of their property without due process of law.

If the assessment attempted to be made by the Tax Commissioner on the 15th of March, 1919, more than two weeks before the company was required to file its report with the Tax Commissioner, which attempted assessment was made without notice and without hearing, imposed a final lien upon the property, and the only relief thereafter obtainable by the plaintiffs would be a reduction in the value of the property, the plaintiffs were by the statute denied due process of law.

Central of Georgia Railway Company v. Wright, 207 U. S. 127.

Turner v. Wade, 254 U. S. 64.

Coe v. Armour Fertilizing Works, 237 U. S. 413, 425.

Northern Pacific Railroad Co. v. Garland, 5 Mont. 146.

SPECIFICATION OF ERRORS III AND IV

The attempted assessment without jurisdiction and the blending of real estate owned in fee with personal property and the assessment of both classes of property as personal property and in a lump sum, violated the Fourteenth Amendment to the Constitution of the United States.

"An assessment when taxes are to be levied upon a valuation, is obviously indispensable. It is required as the first step in the proceedings against individuals subject to taxation and is the foundation of all which follow it. Without an assessment they have no support and are nullities."

Cooley on Taxation, 3rd Ed. p. 597.

People v. Weaver, 100 U. S. 539.

"The assessor has no right or jurisdiction to make the list until the taxpayer or person having property subject to taxation has neglected or refused to make it."

Northern Pacific Railroad Company v. Garland, 5 Mont. 146.

"The assessor in order to make a valid assessment of railroad property must, as in other cases, substantially follow the terms of the statute. By the allegations of the complaint the assessor, before listing and assessing the property in question, made no requisition upon the secretary or clerk of the plaintiff for a list of its property under oath or otherwise, but without notice to plaintiff and upon

his own motion, and knowledge of its value, made the list and assessment upon 'twenty miles of railroad and rolling stock' at \$200,000. If any regard at all is to be had for the statute providing for the assessment of railroads, certainly this assessment is no assessment and wholly invalid."

Northern Pacific Railroad Company v. Garland, 5 Mont. 146.

"By virtue of sections 1013 and 1015 of the statute, the list and return of the assessor shall contain a separate and distinct description and valuation of the real and personal property. These two sections taken together require the separate listing and separate valuation of the personal and real property and forbid that the real and personal property be lumped together and assessed in a mass. The reasons for these provisions of the statute are obvious. Unless the real and personal property are separately and distinctly described and valued, it would be impossible for the Board of Equalization to properly equalize the taxes. If rolling stock is to be taken as personal property, then in this assessment of 'twenty miles of railroad and rolling stock' there was an unwarranted lumping together and valuation of real and personal property. It is the right of the taxpayer that his personal and real property be separately listed and valued and he has the right to be heard before the proper tribunal as to the correctness or propriety of such list and valuation. His right so to be heard and to notice of the proceedings is a constitutional right (*Cooley Tax'n.*, 266), and his right to list his property for taxation or notice

thereof is of the same nature. The assessment and levy of taxes is the exercise of sovereign power. It is taking private property for public uses—a necessary power in every well regulated government—but its exercise must be limited and controlled by law and this law must be substantially observed in order to confer jurisdiction upon the person administering it. No person is required or can be compelled to pay taxes which have not been assessed and levied in pursuance of law.”

Northern Pacific Railroad Company v. Garland, 5 Mont. 146.

County of San Mateo v. Southern Pacific Railroad Company, 13 Fed. Rep. 722.

San Francisco & N. R. Co. v. Dinwiddie, 13 Fed. Rep. 789.

County of Santa Clara v. Southern Pacific Railroad Company, 18 Fed. Rep. 385.

Santa Clara County v. Southern Pacific Railroad, 118 U. S. 394.

San Bernardino County v. Southern Pacific Railroad Company, 118 U. S. 417.

California v. Pacific Railroad Company, 127 U. S. 1.

The decree of the Supreme Court of the State of Washington should, therefore, be reversed.

Respectfully submitted,

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APPENDIX

CHAPTER 78

[H. B. 152.]

ASSESSMENT OF RAILROADS

AN ACT TO PROVIDE FOR THE ASSESSMENT OF THE
OPERATING PROPERTY OF RAILROADS

*Be it enacted by the Legislature of the State of
Washington:*

SECTION 1. That the State Board of Tax Commissioners shall make an annual assessment of the operating property of all railroad companies within this state, for the purpose of levying and collecting taxes as hereinafter provided.

SEC. 2. For the purposes of this act, the following provisions and definitions are made.

1. The term "board" in this act, without other designation means the State Board of Tax Commissioners.

2. Any person, association, company or corporation, owning or operating a railroad in this state, or owning or operating any station, depot, terminal or bridge for railroad purposes, as owner or lessee or otherwise, shall be deemed a railroad company within the meaning of this act.

3. The term "property of the railroad company" as used in this act, shall include all franchises, right-of-way, road bed, tracks, terminals, rolling stock equipment and all other real and personal property of such company, used or employed in the operation of the railroad, or in conducting its business, and shall include all title and interest in such property, as owner, lessee or otherwise. Real estate not adjoining its tracks, stations or terminals, and real estate not used in operating the railroad, is excepted, and shall be assessed in the same manner as like property of individuals.

4. The railway company operating a railroad in this state shall be the representative of every title and interest in the property of the railroad company, as owner, lessee or otherwise, and notice to the operating company shall be notice to all interests in the railroad property, for the purpose of taxation. The assessment of the property of the railroad company in the name of the owner, lessee or operating company, shall be deemed and held an assessment of all the title and interest in such property of every kind and nature.

5. The term "general property of the state" shall be deemed to include all the real and personal prop-

erty appearing upon the assessment rolls and tax rolls throughout the entire state, upon which the state, county and local taxes are levied and collected.

6. The word "railroad" or words "railroad company," wherever they occur in this act, shall be considered, for all purposes of assessment and taxation, as including every kind of street railway, suburban railroad, or interurban railroad, person, firm, association, company or corporation, whether its line of railroad be maintained either at the surface, or above or below the surface of the earth, or by whatever power its vehicles are transported.

SEC. 3. The board shall have access to all books, papers, documents, statements and accounts on file or of record in any of the departments of the state. It shall have like access to all books, papers, documents, statements and accounts on file or of record in counties, towns, cities, villages and assessment districts, and the officers thereof shall, in form prescribed by said board, make returns to it of all the information called for. Said board shall have the power, by a summons signed by a member of said board, and served in a like manner as a subpoena issued from courts of record, to compel witnesses to appear and give evidence, and to produce books and papers. Any member of the board or the secretary

thereof, is authorized to administer oaths to witnesses. The attendance of any witness may be compelled by attachment issued out of any superior court upon application to said court by any member of said board, upon a proper showing that such witness has been duly served with a summons, and has refused to appear before the said board. In case of the refusal of a witness to produce books, papers, documents or accounts, or to give evidence on matters material to the hearing, said board or any member thereof, may institute proceedings in the proper superior court, to compel such witness to testify, or to produce such books or papers, and to punish him for the refusal. All summons and process issued by such board shall be served by the sheriff of the proper county, and such service certified by him to said board, without any compensation therefor. Persons appearing before said board in obedience to a summons, shall, in the discretion of the board, receive the same compensation as witnesses in the superior court, to be audited by the State Auditor, on the certificate of said board. The records, books, accounts and papers of any person, association or corporation owning or operating railroad property to be assessed, shall be subject to visitation, investigation and examination by said board.

SEC. 4. The board, in any matter material to the valuation, assessment or taxation of the property of railroad companies, may cause the deposition of witnesses residing without the state or absent therefrom, to be taken upon notice to the railroad company interested, in like manner as the deposition of witnesses are taken in civil actions in the superior court.

SEC. 5. Every railroad company, operating in this state shall, between the first day of January and the first day of April in each year, under the oath of the president or other chief officer, and the secretary, treasurer, auditor or superintendent, of such company, make and file with the board, in such form as the board may prescribe, reports containing the following facts:

(1) The name of the company.

(2) The nature of the company, whether a person, association, company or corporation, and under the laws of what state or country organized, the date of original organization, date of re-organization, consolidation, or merger, with specific reference to laws authorizing the same.

(3) The location of its principal office.

(4) The place where its books, papers and accounts are kept.

(5) The name and postoffice address of the president, secretary, treasurer, auditor, superintendent, general manager, counsel, directors and all other general officers.

(6) The name and postoffice address of the chief officer or managing agent of the railroad company in the State of Washington, and of all other general officers residing in this state.

(7) The total number of shares of capital stock.

(8) The par value of the shares of capital stock, for the whole system, showing: (1) Amount authorized; (2) amount issued; (3) amount outstanding; (4) the dividends paid thereon.

(9) The market value of the shares of capital stock for the whole system, on the dates and for the periods the board may request or specify.

(10) If such capital stock has no market value, the actual value on the dates and for the periods designated by the said board.

(11) The funded debt of the railroad company for the whole system, and a detailed statement of

all series of bonds, debentures and other securities, forming part of the funded debt, at par value, with date of issue, date of maturity, rate of interest, and interest paid.

(12) The market value of each series of funded debt for the whole system, on the dates and for the periods designated by said board; and if the whole, or a part, of such funded debt has no market value, then the actual value for such periods and such dates as the board may specify.

(13) Such a general description of the real property of the railroad company, owned or operated in the State of Washington, as would be sufficient in a conveyance thereof, under a judicial decree directing a sale for taxes, to vest in the grantee all title and interest in and to said property.

(14) A like description of the personal property, including moneys and credits, held by the company as a whole system, and also the part thereof apportioned to the system in this state.

(15) A statement in detail of all capital stock and bonds or other securities of such railroad company, owned by or held in trust for the company, and the capital stock, bonds, and other securities of other persons, companies or corporations, owned by

or held in trust for it, and the par value, and the market or actual value of the same.

(16) The whole length of the railroad system operated by the company, and the length of the line in this state, whether operated as owner, lessee or otherwise. The length of the line owned and the length of the line operated for the whole system in this state shall be separately reported.

(17) The entire gross earnings of the railroad company from operation, income from operation, and income from other sources for the whole system, and in this state, and the disposition made from such income.

(18) The entire gross earnings of such company in the State of Washington, for each and every month, for each calendar year, ending on the 31st day of December.

(19) The annual reports of the board of directors, or other officers to the stockholders of the company, duplicate of the annual reports made to the interstate commerce commission, to the railway commission in this state, and to the railway commissioners or state officers or boards of other states in or through which the line of said railroad is operated.

(20) Such other facts and information as said board may require, in the form of returns prescribed by it. Blanks for making the above reports shall be furnished to such companies by said board except for the copies of the reports required under the provisions of subdivision nineteen of this section. In case any company refuses or neglects to make the reports provided for by this act, or refuses or neglects to furnish any information requested, the board shall inform itself the best it may on the matters necessary to be known, in order to discharge its duties with respect to the valuation and assessment of the property of such company.

SEC. 6. If any railroad company or its officers or agents, shall refuse or neglect to make any reports required by this act, or said board, or shall refuse or neglect to permit an inspection and examination of its records, books, accounts or papers when requested by said board, or shall refuse or neglect to appear before the board in obedience to a summons, such company shall be estopped to question or impeach the action or determinations of the board upon any grounds not affecting the substantial justice of the tax.

SEC. 7. The board, on or before the first day of March and the first day of June, in each year, ac-

according to their best knowledge and judgment, shall ascertain and determine the true cash value of the property of each railroad company within this state. Every such company shall be entitled on its own motion, to a hearing and to present evidence before such board, at any time between the first day of April and the first day of May, relating to the value of the property of such company, or to the value of the general property in the state. On request in writing for such hearing or presentation, the board shall appoint a time and place therefor, within the period aforesaid, the same to be conducted in such manner as the board shall direct. Such hearing shall not impair or affect the right to a further hearing before the State Board of Equalization, as hereinafter provided. The value of property of railroads for assessment shall be made as of the same time, and in like manner, as the value of the general property of the state, is ascertained and determined.

SEC. 8. The board shall prepare assessment rolls and place thereon, after the name of each railroad company assessed, the general description of the property of such railroad, which shall include its real estate, right-of-way, tracks, stations, terminals, appurtenances, rolling stock, equipment, franchises and all other real and personal property of said

company, which shall be deemed and held to include the entire property and franchises of such railroad company within the state, and all title and interest therein. For the purpose of determining the true cash value of the property of each company, the board may, if deemed necessary, view and inspect the property of such company, and shall consider the reports filed in compliance with this act, and the reports and returns of the company filed in the office of any officer of this state, and such other evidence or information as may have been taken or obtained bearing upon the value of the property of the railroad company assessed. In case of railroad companies which own or operate railroads lying partly within and partly without the state, the said board shall only value and assess the property within this state. In determining the value of the portion within the state, the board shall take into consideration the value of the entire system, the mileage of the whole system, and of the part within this state, together with such other information, facts and circumstances as will enable the board to make a substantially just and correct determination. When the value of the property of the railroad company within this state shall have been ascertained and determined, the amount thereof shall be entered upon said assessment rolls, opposite the name of the com-

pany, and shall be and constitute the value of the entire property of such railroad company within this state, for the levy of taxes thereon, subject to revision and correction by the State Board of Equalization as hereinafter provided. Upon the completion of such assessment, the board shall give notice by mail to each railroad company assessed, of the amount of its assessment as entered upon such rolls.

SEC. 9. In making the investigation and holding the hearings provided for in this act, the board may hold its sessions at such times and in such places throughout the state as it may deem proper, or necessary for the convenient performance of their duties, and may adjourn from time to time and from place to place.

SEC. 10. The assessment rolls of railroad companies shall, by said Board of Tax Commissioners, be submitted to the State Board of Equalization at its annual meeting held for the purpose of equalizing the assessed valuation of the taxable property of the state; and any railroad company interested shall have the right to appear and be heard as to the assessment of the property of such company, and as to the value and assessment of the general property of the state, and the said Board of Equalization may, on application or of its own motion, correct the valuation or assessment of the property of such

company, in such manner as may in its judgment make the valuation thereof just and relatively equal with the valuation of the general property of the state. The assessed valuation of the property of the railroad company as it appears on such rolls, shall not be increased without notice to the company, by registered letter, that such increase is contemplated, and fixing a time for a hearing in relation thereto.

SEC. 11. On the completion of the equalization of the property of the railroad companies and other property in the state, by the State Board of Equalization it shall be the duty of the State Board of Tax Commissioners, to apportion the value of the operating properties of such railroad, to the county or counties through or into which the lines thereof may extend, according to the classification and value thereof, in such proportion to the entire value thereof, as the length of the line in each county may bear to the entire length of line within the state, which valuation, together with a description of the railroad property assessed, giving the name of the company and the length of line in said county, shall be certified by said board, to the county auditor of the proper county. The county auditor shall in like manner distribute the value so certified to him, to the several cities, towns, road districts, school dis-

tricts and other taxing districts, in his county, entitled to a proportionate value of the operating property of such railroad; and each assessment so apportioned shall be placed upon the tax rolls of said county, and the taxes extended against the same, as against other property in said county, cities, towns, school, road, and other taxing districts.

SEC. 12. In making the assessments of the operating property of railroads, and in the apportionment of the values and the taxation thereof, as hereinbefore provided, all land occupied and claimed exclusively as the right-of-way for railroads, with all the tracks, and substructures and superstructures which support the same, together with all side tracks, second tracks, turn-outs, station houses, depots, round-houses, machine shops, or other buildings belonging to the road, used in the operation thereof, without separating the same into land and improvements, shall be assessed and taxed as real property. And the rolling stock and other movable property belonging to any railroad company or corporation shall be considered personal property and shall be assessed and taxed as such.

Passed the House February 11th, 1907.

Passed the Senate February 20, 1907.

Approved by the Governor March 6th, 1907.

CHAPTER 131

[H. B. 256.]

ASSESSMENT OF PROPERTY OF TELEGRAPH COMPANIES

AN ACT TO PROVIDE FOR THE ASSESSMENT OF THE
PROPERTY OF TELEGRAPH COMPANIES

*Be it enacted by the Legislature of the State of
Washington:*

SECTION 1. The State Board of Tax Commissioners shall make an annual assessment of the property of all telegraph companies within this state for the purpose of levying taxes thereon for state, county and other purposes.

SEC. 2. For the purposes of this act the following provisions and definitions are made:

(1) The term "board" in this act, without other designation, means the State Board of Tax Commissioners.

(2) Any person, co-partnership, association, company or corporation owning or operating any telegraph or cable line in this state with appliances for the transmission of messages and engaged in the business of furnishing telegraph service for com-

pensation as owner, lessee or otherwise shall be deemed, held and known as a telegraph company.

(3) The word "company" in this act without other designation or qualification shall mean and include any telegraph company as herein defined. The words "property of a company" without other designation or qualification shall mean and include the property of any telegraph company.

(4) The term "property of a company" or "property of the company" as used in this act shall include all franchises, right-of-way, poles, wires, cables, devices, appliances, instruments, equipment and all other real and personal property of such company used or employed in the operation of the company or in conducting its business and shall include all title and interest in such property as owner, lessee or otherwise.

(5) The company operating a line or lines in this state with all property and appliances connected and used therewith in the service, shall be the representative of every title and interest in the property of the company as owner, lessee or otherwise, and notice to the operating company shall be notice to all interests in the property for the purpose of taxation. The assessment and taxation of the property

of a company in the name of the owner, lessee or operating company shall be deemed and held an assessment and taxation of all the title and interest in such property of every kind or nature.

(6) The term "general property of the state" shall be deemed to include all real and personal property appearing upon the assessment rolls and tax rolls throughout the state upon which state, county and local taxes are levied and collected with such changes and corrections made by the board as hereinafter provided.

SEC. 3. The board shall have access to all books, papers, documents, statements or accounts on file, or of record in any of the departments of the state. It shall have like access to all books, papers, documents, statements and accounts on file or of record in counties, towns, cities, villages and assessment districts, and the officers thereof shall in form prescribed by said board make returns to it of all information which may be called for. Said board shall have the power, by a summons signed by a member of said board and served in like manner as a subpoena issued from courts of record, to compel witnesses to attend, give evidence and to produce books and papers. Any member of the board, or the secre-

tary thereof, is authorized to administer the oath to witnesses. The attendance of any witness may be compelled by attachment issued by any superior court upon a proper showing that such witness has been duly served with the summons, and has refused to appear before said board. In case of the refusal of a witness to produce books, papers, documents or accounts, or to give evidence on matters material to the hearing, said board, or any member thereof, may institute proceedings in a proper superior court, to compel such witness to testify, or to produce such books or papers, and to punish him for the refusal. All summons and process issued by such board shall be served by the sheriff of the proper county and such service certified by him to said board, without any compensation therefor. Persons appearing before said board in obedience to a summons, shall, in the discretion of the board, receive the same compensation as witnesses in the superior court, to be audited by the State Auditor, on the certificate of said board. The records, books, accounts and papers of any person, association or corporation, owning or operating telegraph property to be assessed, shall be subject to visitation, investigation, and examination by said board, or by such person as it may designate.

SEC. 4. The board, in any matter material to the valuation, assessment or taxation of the property of a company, may cause the depositions of witnesses residing without the state or absent therefrom to be taken, upon notice to the company interested, in like mode as the depositions of witnesses are taken in civil actions pending in the superior court.

SEC. 5. Every company operating a telegraph line or lines in this state, shall annually between the first day of January and the first day of April in each year, under the oath of the president or other chief officer and the secretary, treasurer, auditor or superintendent of such company, make and file with the board in such form as said board may prescribe, reports containing the following facts:

- (1) The name of the company.
- (2) The nature of the company, whether a person, association, company or corporation, and under the laws of what state or country organized, the date of original organization, date of re-organization, consolidation or merger, with specific reference to laws authorizing the same.
- (3) The location of its principal office.

(4) The name of the place where its books, papers and accounts are kept.

(5) The name and postoffice address of the president, secretary, treasurer, auditor, superintendent, general manager, counsel, directors and all other general officers.

(6) The name and postoffice address of the chief officer or managing agent of the company in Washington and of all other general officers residing in the state.

(7) The total number of shares of capital stock.

(8) The par value of the shares of the capital stock for the whole system showing separately: (1) Amount authorized. (2) Amount issued. (3) Amount outstanding. (4) Also the dividends paid thereon.

(9) The market value of the shares of capital stock for the whole system, on the dates and for the periods the board may request or specify, but the average market value as near as may be of said shares shall be given at least for one year ending the 31st day of December preceding.

(10) If such capital stock has no market value, the actual value on the dates and for the periods designated by said board.

(11) The funded debt of the company for the whole system, and a detailed statement of all series of bonds, debentures or other securities, forming a part of the funded debt at par value, with date of issue, maturity, rate of interest and interest paid.

(12) The market value of each series of funded debt for the whole system on the dates and for the periods designated by said board, and if the whole or a part of such funded debt has no market value, then the actual value thereof for such dates and periods as said board may specify, but the average market value as near as may be of each series of funded debt shall be given at least for one year ending the 31st day of December preceding.

(13) Such general description of the real estate of the company owned or operated in Washington as would be sufficient in a conveyance thereof, under a judicial decree, directing a sale for taxes to vest in the grantee all title and interest in and to the said property.

(14) A like description of the personal property, including moneys and credits held by the company as a whole system and the part thereof apportioned to the line in Washington.

(15) A statement in detail of all capital stock, bonds or other securities of such company owned by, or held in trust, for the company and the capital stock, bonds, or other securities, of other persons, companies or corporations owned by, or held in trust for it and the par value and the market or actual value of the same.

(16) The description and true value and assessed value of real estate within and without the state and the gross and net income therefrom if the company claims any deduction in the value of its property on account thereof.

(17) A detailed description of all capital stock, bonds, mortgages, securities, credits and other personal property, if any, with the value thereof, owned by the company which is not used or employed in the business and is claimed to be exempt in the valuation of its property for taxation under this act.

(18) Every such company shall also report:

(a) The whole length of the lines of poles, single wire of the entire system and separately in this state.

(b) The length of wire underground and on buildings of the entire system and in this state.

(c) The length of wire and cable submarine for the entire system and in this state.

(d) The number of miles of all wires and cables of the entire system and the miles of all wires and cables in this state.

(e) The number of offices for the entire system and the number of offices in this state.

(f) The number of messages received and transmitted for the entire system and the number received and transmitted in this state.

(19) The entire gross earnings of the company from operation, expenses of operation, net earnings from operation and the income from other sources for the whole system and in Washington and the disposition made of such net earnings and income.

(20) The annual report of the board of directors or other officers to the stockholders of the company.

(21) Such other facts or information as the company may deem material upon the question of the taxation of its property in this state.

(22) Such other facts and information as said board may reasonably require in form or returns prescribed by it.

(23) . Any company, association or corporation owning all or a majority of the capital stock of the company operating in this state or having practical control of any such company may be required to make report of such facts and information specified in this section as may be deemed necessary by the board to a correct valuation and assessment of the property of such operating company.

Blanks for making the above reports shall be furnished to such companies by said board except for the copies of reports required under the provisions of subdivision 20 of this section. In case any company refuses or neglects to make the reports required by this act, or refuses or neglects to furnish any information requested, the board shall inform itself the best it may on the matters necessary to be known in order to discharge its duties with respect to the valuation and assessment of the property of such company.

SEC. 6. The property of a company as defined in section 2, subject to taxation under the provisions of this act, is declared to be personal property and the place of assessment and taxation of such property is fixed at the capital of the state.

SEC. 7. If any company or its officers or agents shall refuse or neglect to make any reports required

by this act or said board, or shall refuse or neglect to permit an inspection and examination of its records, books, accounts or papers, when requested by said board, or shall refuse or neglect to appear before the board in obedience to a summons, such company shall be estopped to question or impeach the action or determination of the board, except upon satisfactory proof of fraud or mistake injurious to the company. No company shall be allowed in any action or proceeding to question the amount or valuation of its property as assessed by the board unless such company shall have made and filed with such board a full and complete report of the facts and information prescribed by section 5 of this act and called for by the board thereunder, provided the refusal or neglect of such company to file the report in time may on application of the company and for good cause shown be excused by the board on condition that such company shall make a full and complete report of all facts and information mentioned in said section 5 within fifteen days after notice by mail of the amount of the preliminary valuation of the property of such company and shall appear before the board before the time of the final hearing and make a full disclosure of all property liable to assessment and taxation

under this act and show the value of such property to the satisfaction of the board.

SEC. 8. The board on or between the first day of April and the first day of July in each year, according to their best knowledge and judgment shall ascertain and determine the true cash value of the property of each company within the state. Every such company shall be entitled on its own motion to a preliminary hearing and to present evidence before such board at any time on or between the first and fifteenth days of June relating to the value of the property of such company, or to the value of the general property of the state. On request in writing for such hearing or presentation, the board shall appoint a time and place therefor within the period aforesaid; the same to be conducted in such manner as the board shall direct. Such preliminary hearing shall not impair or affect the right to the further hearing provided for in section 11. The value of the property of a company for assessment shall be made on the same basis and for the same period of time as near as may be as the value of the general property of the state is ascertained and determined. The board shall prepare an assessment roll and place thereon after the name of each company assessed, the following general description of

the property of such company, to-wit: "Real estate, right-of-way, poles, wires, cables, devices, appliances, instruments, franchises and all other real and personal property of said company," which shall be deemed and held to include the entire property and franchises of such company within the state, and all title and interest therein. For the purpose of determining the true cash value of the property of each company, appearing on the assessment roll, the board may, if deemed necessary, view and inspect the property of such company and shall consider the reports filed in compliance with this act, and the reports and returns of the company filed in the office of any officer of this state, and such other evidence or information as may have been taken or obtained bearing upon the true cash value of the property of the company assessed. In case the companies which own or operate lines lying partly within or partly without the state, the said board shall only value and assess the property within this state. In determining the value of the portion within the state the board may take into consideration the value of the entire system, the mileage of the whole system and of the part within this state, together with such other information, facts and circumstances as will enable the board to make a sub-

stantially just and correct determination. When the true cash value of the property of a company within this state shall have been ascertained and determined, the amount thereof shall be entered upon the assessment roll opposite the name of the company and shall be, and constitute, the assessment of the entire property of such company within this state for the levy of taxes thereon, subject to review and correction, as hereinafter provided. The board shall thereupon give notice by mail to each company assessed of the amount of its assessment as entered upon such roll.

SEC. 9. In making the investigations and holding the hearings provided for in this act, the board may hold its sessions at such times and in such places throughout the state as it may deem proper, or necessary for the convenient performance of their duties, and may adjourn from time to time and from place to place.

SEC. 10. The assessment rolls of telegraph companies shall, by said State Board of Tax Commissioners, be submitted to the State Board of Equalization at its annual meeting held for the purpose of equalizing the assessment valuation of the taxable property of the state; and any telegraph company interested shall have the right to appear and be

heard as to the assessment of the property of such company, and as to the value and assessment of the general property of the state, and the said Board of Equalization may, on application or of its own motion, correct the valuation or assessment of the property of such company, in such manner as may in its judgment make the valuation thereof just and relatively equal with the valuation of the general property of the state. The assessed valuation of the property of any telegraph company as it appears on such rolls, shall not be increased without notice to the company by registered letter, that such increase is contemplated, and fixing a time for a hearing in relation thereto.

SEC. 11. Upon the completion of the equalization of the property of the telegraph companies and other property in the state by the State Board of Equalization, it shall be the duty of the State Board of Tax Commissioners to apportion the value of the properties of such telegraph companies to the county or counties through or into which the lines thereof may extend according to the value thereof in such proportion to the entire value as the length of the line in each county may bear to the entire length of line within the state computed on a wire mileage basis, which valuation, together with a description

of the property assessed, giving the name of the company, the length of line and wire mileage in said county, shall be certified by said board to the county auditor of the proper county. The county auditor shall in like manner distribute the value so certified by him to the several cities, towns, road districts, school districts, and other taxing districts in his county entitled to a proportionate value thereof, and each assessment so apportioned shall be placed upon the tax rolls of said county, and the taxes extended against the same as against other property in said county, cities, towns, school, road and other taxing districts.

Passed the House February 26th, 1907.

Passed the Senate March 1st, 1907.

Approved by the Governor March 12th, 1907.

CHAPTER 21

(Session Laws, 1911, page 62.)

ASSESSING OPERATING PROPERTY OF RAILROADS

AN ACT TO AMEND SECTION 12 OF CHAPTER 78, SESSION LAWS OF 1907, RELATING TO THE ASSESSMENT OF THE OPERATING PROPERTY OF RAILROADS, APPROVED MARCH 6, 1907, AND DECLARING AN EMERGENCY.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. That section 12 of chapter 78, Session Laws of 1907, relating to the assessment of the operating property of railroads, approved March 6, 1907, be amended to read as follows:

SEC. 12. In making the assessments of the operating property of railroads, and in the apportionment of the values and the taxation thereof, as hereinbefore provided, all land occupied and claimed exclusively as the right of way for railroads, with all the tracks and substructures and superstructures which support the same, together with all side tracks, second tracks, turn-outs, station houses, depots, round houses, machine shops, or other buildings belonging to the road used in the operation

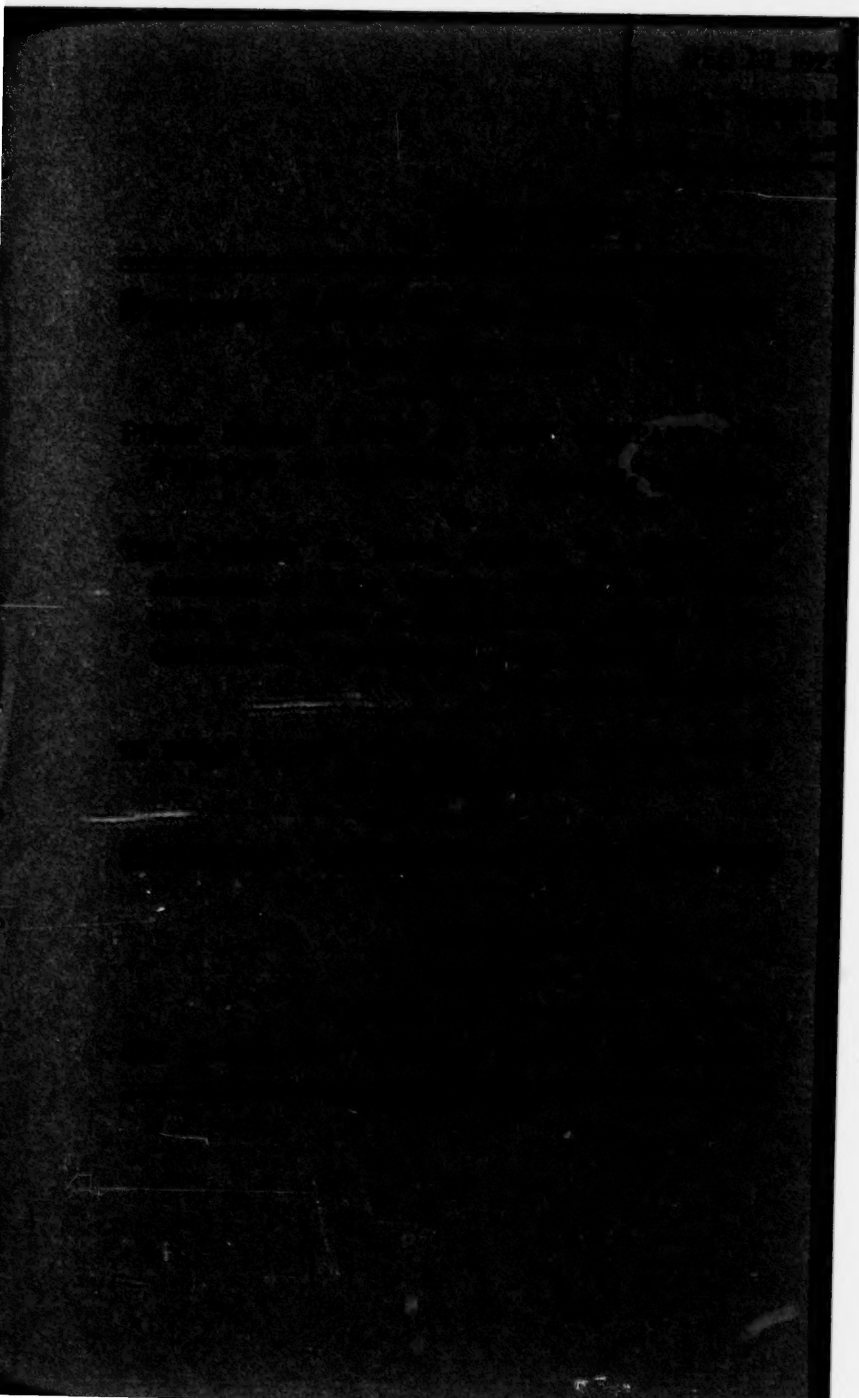
thereof, without separating the same into land and improvements, shall be assessed and taxed as real property. And the rolling stock and other movable property belonging to any railroad company shall be considered as personal property and shall be assessed and taxed as such: Provided, That all of the operating property of street railroads shall be assessed and taxed as personal property.

SEC. 2. An emergency exists and this act shall take effect immediately.

Passed by the House February 2, 1911.

Passed by the Senate February 15, 1911.

Approved by the Governor February 21, 1911.



No. 653.

Supreme Court of the United States

OCTOBER TERM, 1922.

PUGET SOUND POWER & LIGHT COMPANY and
THE CITY OF SEATTLE, *Plaintiffs in Error,*

VS.

THE COUNTY OF KING, FRANK W. HULL, as
Assessor of King County; NORMAN M. WAR-
DALL, as Auditor of King County, and WM. A.
GAINES, as Treasurer of King County,
Defendants in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE
OF WASHINGTON.

BRIEF OF DEFENDANTS IN ERROR

MALCOLM DOUGLAS,
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431 County-City Building, Seattle, Washington.

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Supreme Court of the United States

OCTOBER TERM, 1922.

PUGET SOUND POWER & LIGHT COM-
PANY and THE CITY OF SEATTLE,

Plaintiffs in Error,

VS.

THE COUNTY OF KING, FRANK W.

HULL, as Assessor of King County,

NORMAN M. WARDALL, as Auditor

of King County, and WM. A. GAINES,

as Treasurer of King County,

Defendants in Error.

No. 653.

IN ERROR TO THE SUPREME COURT OF THE STATE
OF WASHINGTON

BRIEF OF DEFENDANTS IN ERROR

STATEMENT OF THE CASE

Plaintiffs in error are Puget Sound Power & Light Company and the City of Seattle, hereinafter respectively called the "Company" and the "City", when referred to separately, and "plaintiffs" when referred to jointly. Defendants in error are hereinafter called "defendants".

Italics in this brief are ours, unless otherwise stated. All code references will be to Remington's 1915 Codes and Statutes of Washington.

The Company owned and operated a street rail-

way system in the City of Seattle. Under the local law this operating street railroad property was assessable by the State Tax Commissioner as a unit and for purposes of taxation was classified as personal property.

The assessment period begins on March 1st of each year. On March 15, 1919, the Tax Commissioner placed a valuation on this property for taxation, upon which date, under the local law, the lien attached for the tax. This action was brought to enjoin the collection of this tax in the principal sum of \$401,017.76. The City was made a defendant, but filed a cross-complaint and adopted the Company's position. The trial court held the tax valid and dismissed the action. Its decree was affirmed by the State Supreme Court, first in department, and later *en banc*. The case is here on two writs of error, one by the Company in which the City refused to join, one by both.

In December, 1918, the City, by ordinance, authorized the purchase for \$15,000,000.00 of the Company's street railway system in the City of Seattle, and some *non-operating* real estate. Thereafter a test suit was brought to determine the legality of the proposed transaction, resulting in favor of its legality, *Twichell v. Seattle*, 106 Wash., 32, decided March 5, 1919. On March 31, 1919 the City took title to and came into posses-

sion of the property and the Company received the bonds in payment.

In Ordinance No. 39069 is set forth a copy of the form of contract between the parties, in which it is stipulated (Plaintiffs' Exhibit "A", Tr. p. 127):

"At the time of the delivery of said deed and bill of sale, or prior thereto, the COMPANY shall pay to the CITY in full its gross earnings tax, computed to the date of delivery of said deed and bill of sale; likewise, within the same time, the COMPANY shall pay in full all general and special excises, taxes and assessments and public charges of whatsoever nature which are or may become a lien upon, or become enforceable against, said PROPERTY, or any portion thereof, or upon or against the income therefrom, and shall forthwith file with the City Comptroller receipts or duplicate receipts showing such payment; Provided, that state, county and municipal taxes levied against the PROPERTY for the year 1919 shall be paid, before the same shall become delinquent, by the respective parties hereto, in amounts proportional to the respective periods of time that said parties are respectively in possession of said PROPERTY during the year 1919."

Plaintiffs' Exhibit "A" (Tr. pp. 103-138) contains a description and inventory of the proper-

ties involved in the transfer, comprising the operating street railway property, and the incidental non-operating property. The latter had an assessed valuation of \$60,150.00 (Tr. pp. 76, 166). Early in March, 1919, Clark R. Jackson, State Tax Commissioner, requested from Frank W. Hull, the local assessor, a list of this non-operating real property included in the transaction, which was prepared and mailed prior to March 15, 1919 (Tr. p. 93). The schedule of such non-operating real property is shown on Defendants' Exhibit "2" (Tr. pp. 163-166).

This non-operating real property had always been assessed by the county assessor. It was necessary to deduct its value from the total value of property included in the inventory, since under the local law it was legally assessable by the county assessor, and since he could not assess it for the reason that the lien of real property taxes does not finally attach until in October when the County Commissioners fix the tax levy. by the City was not assessed.

Eliminating this non-operating real estate, which became *non-taxable* after March 31, 1919, the State Tax Commissioner on March 15, 1919, placed a valuation of \$12,000,000.00 upon the operating property of the Company in the City of Seattle as shown by the inventory (Plaintiffs' Exhibit "A", Tr. p. 71), and assessed the same as personal property against the Company on

that date. This assessment appearing on the Tax Commissioner's book of assessments is shown as Exhibit "1," (Tr. p. 167).

While the valuation and assessment were so made on March 15th, the clerical entry in the book by the stenographer in the office in the course of routine business may have been delayed a day or two, but was before April 1, 1919 (Tr. p. 83).

On April 25, 1919, formal protest against the assessment was made to the Tax Commissioner (Plaintiffs' Exhibit "G" Tr. p. 159). Later came the annual hearing before the State Board of Equalization, at the close of which the State Auditor, under § 9206, certified to the County Assessor as follows (Plaintiffs' Exhibit "E", Tr. pp. 157-158):

"THIS IS TO CERTIFY, That the assessed valuation of the operating property of the PUGET SOUND TRACTION, LIGHT & POWER COMPANY in King County, State of Washington, for the year 1919, *as revised, corrected and equalized by the State Board of Equalization* is as follows:

Interurban Lines:

Track and right-of-way assessed	
as real property	\$
Rolling stock and other movable	
personal property	\$

Street Railway Lines:

Including track, equipment, roll-

ing stock and other movable property assessed as personal property	\$5,640,000
--	-------------

Total equalized valuation	\$5,640,000"
---------------------------	--------------

Based upon this valuation, taxes were extended against such operating property of the Company in the sum of \$401,017.76, being segregated as follows (Tr. p. 98) :

State of Washington	\$ 52,384.32
City of Seattle	179,365.76
School District No. 1, Seattle	76,140.00
County of King	93,127.68

Total	\$401,017.76
-------	--------------

These taxes were based upon levies for such taxing districts as follows:

State of Washington	9.288 mills
County of King	16.512 mills
City of Seattle	30.42 to 32.20 mills
School District No. 1, Seattle	13.5 mills

No question is raised in the case as to valuation or rate of levy.

ARGUMENT

I.

ANALYSIS OF THE LOCAL LAW

There are in this State two general methods for the levy and collection of property taxes, one relating to real property, the other to personal property. The Constitution makes no distinction between real and personal property, except that the Third Amendment, exempts from taxation certain personal property for each head of a family. Art. VII, § 2 thereof, provides for a uniform and equal *rate* and for just *valuation*, while § 3 provides for the assessing and levying of taxes on corporation property:

“ * * * as near as may be by the same methods as are provided for the assessing and levying of taxes on individual property.”

The legislature has generally classified property and fixed its character for taxation purposes as real or as personal property §§ 9092, 9093. Operating steam railroad property is assessed *in solido* and declared to be real property. Rolling stock and other movable steam railroad property is declared to be personal property, § 9152. Street railroad operating property is assessed as an entirety—and classified as personal property, § 9152.

The same is true of telephone and telegraph properties, § 9176. Leaseholds, standing timber

and improvements on public lands are separately classified as personal property for taxation purposes, §§ 9094, 9095, 9140.

There is one method for the collection of personal property taxes, and another for real property taxes, §§ 9220 and 9223 (a). For Chapter on collection of taxes see §§ 9219-9250.

AS TO WHEN TAX LIEN ATTACHES

All taxable property is subject to assessment as of March 1st, of each year, § 9091 providing that:

"All real and personal property now existing, or that shall be hereafter created or brought into this state, shall be subject to assessment and taxation for the support of the state government, and for county, school, municipal, or such other purposes as shall be designated by law, upon equalized valuations thereof, fixed with reference thereto on the first day of March at 12 o'clock meridian, in each and every year in which the same shall be listed, except such property as shall be expressly exempted therefrom by the provisions of law."

The tax lien upon personal property attaches upon the date the assessment is made (§ 9235, Laws of 1903, p. 73, § 3).

Previous legislation specifying when the lien

for personal property taxes attached was as follows:

Laws 1893, p. 361,

“ * * * from and after the time the tax books are received by the county treasurer.”

Laws 1895, p. 520,

“ * * * from and after the first day of January next succeeding the date of the levy of such taxes.”

Laws 1897, p. 176,

“ * * * from and after the first Monday of February next succeeding the date of the levy of such taxes.”

Construing the present 1903 statute, the court held in *Klickitat Warehouse Company v. Klickitat County*, 42 Wash. 299, at p. 303, that

“ * * * the lien for taxes on personal property attaches to the personal property and real estate of the person assessed immediately when such personal property is listed with the county assessor, and he has placed his valuation thereon.”

The *Klickitat* case was affirmed in *Puyallup v. Lakin*, 45 Wash. 368. The court there said (pp. 369-370):

“The statute, Laws 1903, p. 73, § 3, provides: ‘The taxes assessed upon personal property shall be a lien upon all real and personal property of the person assessed,

from and after the date upon which such assessment is made,' and the result of this case depends upon the construction of this statute. It is the contention of the appellant that the phrase 'taxes assessed' should be construed to mean taxes levied, and that, therefore, no lien attached until after the levy, which was made in October, subsequent to the sale of the property to the municipality. But this court in the case of *Klickitat Warehouse Co. v. Klickitat County*, 42 Wash. 299, 84 Pac. 860, placed a different construction upon this statute, and held the date of assessment to be the time when the assessor placed his valuation on personal property listed with him by the owner; and that the word 'assessments,' as used in the law, meant the valuation of property for taxation by the assessor, and not the levy of taxes by the commissioners. We are asked by the appellant to overrule the decision in this case as not being consistent with the law. The decision in that case was arrived at after a full presentation of the law and mature deliberation by this court, and notwithstanding the learned argument made by the appellant, we are convinced that a proper construction was placed upon the statute in that case, and therefore decline to overrule it."

In *Lewis Construction Company v. King*

County, 60 Wash. 694, referring to § 9235, the court said (p. 697):

"It is clear from this section that such tax is a charge against the property assessed *from and after the assessment.*"

In *State v. Snohomish County*, 71 Wash. 320, it was pointed out that the statute, § 9235, lays down one rule for real property and another for personal property, that being a real property case. The court said (pp. 325, 326):

"We are not blind to the fact that a contrary view finds apparent support in the decisions of this court in *Klickitat Warehouse Co. v. Klickitat County*, 42 Wash. 299, 84 Pac. 860, and *Puyallup v. Lakin*, 45 Wash. 368, 88 Pac. 578. Those cases, however, construe only that part of the lien statute relating to taxes on *personal property*. * * * The lien is thus by statute made complete, perfect, and enforceable *prior to the levy for the current year*. Every purchaser of personal property subsequent to the assessment, therefore, takes subject to a perfected and indestructible lien. No such provision for acceleration and computation is found as to real property taxes. The lien as to them is inchoate and unenforceable until the tax has been fully imposed by the levy for the current year."

The statute was again before the court in

Scandinavian American Bank v. King County, 92 Wash. 650, where it was held (p. 652):

"Taxes upon real property are made a lien upon the specific property charged, and taxes upon personal property are made a lien upon the specific personal property charged from and after the date of the assessment. Rem. & Bal. Code, §§ 9230, 9235, *supra*. * * * Manifestly the lien for delinquent personal taxes does not attach to real estate prior to the time specific real property is selected by the county treasurer and he has charged it by proper entry upon the tax rolls, and then only when the property is owned by the person owing the delinquent personal property tax. Not until then is such real estate (real property, owned by the person, etc.) 'chargeable therewith.' "

Moreover, the statute is not concerned with the particular official who makes the assessment, since it declares in words that the tax shall be a lien

" * * * from and after the date when the assessment is made * * * "

This is equally as applicable to the State Tax Commissioner as to local County Assessors. It is thus manifest that the lien of this personal property tax became complete on March 15, 1919, and prior to the conveyance of the property to the

City, March 31, 1919, and the court so held (Tr. pp. 169-171).

AS TO THE COMPANY'S REPORT

It is urged that the Tax Commissioner should have waited with his assessment until after April 1st, or until the Company had filed the report referred to in § 9145. (See § 5, p. 72, Plaintiffs' Brief in Error). The street railroad statute provides (§ 9147):

"The board, on or before the first day of March and the first day of June, in each year, according to their best knowledge and judgment, shall ascertain and determine the true cash value of the property of each railroad company within this state. * * *

(a) The contention that it could not be made until the Company's report was filed is erroneous, and counsel are mistaken in calling the report a listing.

The Act of 1907, p. 132, is an adaptation of the Act of 1897, p. 136, which it superceded as to taxation of steam railroads and street railways.

The following points are material to our consideration of the 1897 Act.

§ 15, p. 143:

"Every person required by this act to *list* property shall make out and deliver to the *assessor*, when required, a statement, verified by his oath, of all the personal property

in his possession or under his control, and which, by the provisions of this act, he is required to list for taxation. * * *"

§ 37, p. 152:

"At the same time that the lists or schedules as hereinbefore required to be returned to the county assessor, the person, company or corporation running, operating or constructing any railroad in this state shall return to the *state auditor* sworn *statements* or schedules as follows: * * *"

(For complete section see Appendix).

In the 1907 Act *listing* is not required. Instead, the provisions of § 37, *supra*, are enacted as § 5, p. 134, Laws 1907, (§ 9145), with some changes. A comparison of these sections shows that the *report* referred to in the 1907 Act is the *statement* referred to in § 37 of the 1897 Act, and not the *listing* specified in § 15 of the 1897 Act.

Listing is purely a statutory matter. It may or may not be required. In the 1897 Act a penalty was fixed for failure to *list* with the local assessor, and for failure to file the *statement* with the State Auditor (§ 38, p. 153). In the 1907 Act no penalty is prescribed.

That the report is merely an *aid* to the Tax Commission (later Commissioner) is shown by reference to the numerous other aids set forth in § 8 of the 1907 Act, p. 137, (§ 9148).

Moreover, the Company in making its reports had for years lumped the operating property of the street railway company together with its power plants and transmission lines, as well as the steam heating plant, making the report of little use for valuing the operating property.

Concerning this report, the Tax Commissioner testified (Tr. p. 90):

"I would say that the report as made in prior years is of very little consequence in determining the value of the street railway operating property separately."

Following which Mr. Howe stated (Tr. p 90):

"MR. HOWE: *We are not raising any point—*

MR HANSON: As to the valuation.

MR. HOWE: *as to the valuation*, but we are taking the position that the property which is on the tax roll and on which we are assessed includes the value of all the street railway operating property, real and personal.

MR. HANSON: There is no quarrel about that. The statute itself says that it shall be assessed as personal property.

MR. HOWE: I just want to make that clear.

Q. Mr. Jackson, why did you list the operating property, both real and personal, of the street railway company in the City

of Seattle for the tax of 1919 as personal property?

A. *I did it in pursuance to the provisions of the statute."*

Again the Tax Commissioner stated (Tr. 91):

"In prior years, that is, this report and in years gone by we would like to have had a segregation of the different operations of the company, but the company complained that it was impossible for them to make the segregations, and they asked us—they made this as the best way they could, that is, lumped it. We would like to have had it in the separate operations, the light and power, and the steam heat, and the Bellingham system, income and disposition account separate, but we never were able to get it."

The point then turns upon an informal report, directory and not mandatory, designed as an *aid* to the taxing authority, but admittedly of no real value in the lump form in which the Company prepared it. This report to be used in determining a valuation as to which counsel admitted, "we are not raising any point."

To avail itself of the beneficial effects supposed to flow to it from the filing of its annual reports with the State Tax Commissioner such reports must be *filed* in a timely manner. The purpose of the reports was to *aid*, not *delay* the Com-

missioner. The Company could have filed its report any time after January 1st.

(b) A provision of law designed as an aid to a taxing officer will be held directory and not mandatory.

Martin County v. Drake, (Minn.) 41 N. W. 942;

Smith v. Newell, 32 Wash. 369;

Coolidge v. Pierce County, 28 Wash. 95;

French v. Edwards, 13 Wall. 506, 20 L. Ed. 702;

Wingate v. Ketner, 8 Wash. 94;

Torrey v. Millbury, 21 Pick. 64;

Hazzard v. O'Bannon, 36 Fed. 854;

Mayor, etc., of City of Baltimore v. Gorter, 48 Atl. 445;

Buswell v. Board of Sup'rs., 48 Pac. 226;

State v. West Duluth Land Co., 78 N. W. 1115;

Ontario Land Co v. Wilfong, 223 U. S. 543, 56 L. Ed. 544;

Turpin v. Lemon, 187 U. S. 51, 47 L. Ed. 70.

Construing the statute as to the report, the court below in its opinion (Tr. 175) held:

"The reports which may be sent in by the Company as early as January 1 must be considered as directory provisions of the statute only, so far as the power of the com-

missioner to make the assessment is concerned."

(c) The construction which the state court has placed upon the local statute is conclusive upon this Court.

Pittsburgh, C. C. & St. L. Ry. Co. v. Backus, 154 U. S. 421, 38 L. Ed. 1031;

Baccus v. La., 232 U. S. 334, 58 L. Ed. 627;

McElvaine v. Brush, 142 U. S. 155, 35 L. Ed. 971.

In *Castillo v. McConnico*, 168 U. S. 674, 42 L. Ed. 622, it was said (U. S. 683, L. Ed. 626):

"When, then, a state court decides that a particular formality was or was not essential under the state statute, such decision presents no Federal question, providing always the statute as thus construed does not violate the Constitution of the United States, by depriving of property without due process of law. This paramount requirement being fulfilled, as to other matters the state interpretation of its own law is controlling and decisive. This distinction is pointed out by the decisions of this court."

The Washington local law was before this Court in *French v. Taylor*, 199 U. S. 274, 50 L. Ed. 189, the Court saying (U. S. 277, L. Ed. 192):

"* * * the State Supreme Court held that the acts provided for taxation *in rem*; that

notice was given as required; that giving the name of the owner was not essential to the validity of the assessment, and that the county officers and defendants in error had fully complied with the laws. So that subdivision eleven, in attacking the proceedings, only objects to the determination of questions of local law or of fact, not in themselves reviewable here."

We submit that the same rule applies here.

AS TO NOTICE AND HEARING

§ 9204 fixes the time and place for the annual meeting of the State Board of Equalization. The street railroad assessment act, § 9150, provides for a formal hearing and review of street railroad assessments before that tribunal, as well as informal hearings before the State Tax Commissioner (§§ 9147, 9149).

The hearing was had and after its conclusion, the Board of Equalization certified the valuation to the local assessor (Tr. 100).

This hearing affords due process of law.

Kentucky R. R. Tax Cases, 115 U. S. 321,
29 L. Ed. 414;

Hibben v. Smith, 191 U. S. 310, 48 L. Ed.
195.

In Fallbrook Irrig. Dist. v. Bradley, 164 U. S.

112, 41 L. Ed. 369, the Court said (U. S. 168, L. Ed. 392) :

“Due process of law is not violated, and the equal protection of the laws is given when the ordinary course is pursued in such proceedings for the assessment and collection of taxes that has been customarily followed in the state and where the party who may subsequently be charged in his property has had a hearing or an opportunity for one provided by the statute.”

Thereafter, plaintiffs in error had their day in court as to the legality of the tax.

A taxpayer need not first apply to the Board of Equalization to secure relief from an excessive valuation.

Whatcom County v. Fairhaven Land Co.,
7 Wash. 101.

No tender is necessary where it is claimed the tax is void under the rule announced in *Landes Estate Co. v. Clallam County*, 19 Wash. 569.

The Court has power by injunction to restrain the enforcement of an illegal tax.

N. W. Lumber Co. v. Chehalis Co., 24
Wash. 626;

Smith v. Newell, 32 Wash. 369.

Due process of law is thus afforded.

Hibben v. Smith, 191 U. S. 310, 48 L. Ed.
195;

Davidson v. New Orleans, 96 U. S. 97, 24 L. Ed. 616;

Hagar v. Reclamation Dist., 111 U. S. 701, 28 L. Ed. 569;

Bell's Gap R. Co. v. Penn., 134 U. S. 232, 33 L. Ed. 892;

Kentucky R. R. Cases, 115 U. S. 321, 29 L. Ed. 414.

Discussing both the right to be heard before a Board of Equalization and the right to litigate a tax in court as constituting due process of law, it was held in *Hagar v. Reclamation Dist.*, *supra* (U. S. 710, L. Ed. 572):

“But where a tax is levied on property, not specifically but according to its value, to be ascertained by assessors appointed for that purpose upon such evidence as they may obtain, a different principle comes in. The officers, in estimating the value, act judicially, and in most of the States provision is made for the correction of errors committed by them, through boards of revision or equalization, sitting at designated periods provided by law, to hear complaints respecting the justice of the assessments. The law in prescribing the time when such complaints will be heard, gives all the notice required, and the proceeding by which the valuation is determined, though it may be followed, if the

tax be not paid, by a sale of the delinquent's property, is due process of law.

"In some States, instead of a board of revision or equalization, the assessment may be revised by proceedings in the courts and be there corrected if erroneous, or set aside if invalid; or objections to the validity or amount of the assessment may be taken when the attempt is made to enforce it. In such cases all the opportunity is given to the taxpayer to be heard respecting the assessment, which can be deemed essential to render the proceedings due process of law."

Due process of law in taxation does not require a judicial hearing.

Kelly v. Pittsburgh, 104 U. S. 78, 26 L. Ed. 658;

Davidson v. New Orleans, 96 U. S. 97, 24 L. Ed. 616.

We respectfully submit, therefore, that the following propositions are established and binding upon the Court: That the tax was levied for public purposes, pursuant to law; that the property assessed was subject to taxation at the time of assessment; that the tax lien attached on the day of assessment; that the taxing official had jurisdiction; that the Company had statutory notice of and was afforded a hearing before the State Board of Equalization and later had its day in court.

In view of these essential elements, we submit that the decision rests upon the construction and not upon the validity of the statute and presents no federal question.

Grand Gulf R. Co. v. Marshall, 12 How. 165, 13 L. Ed. 938;

Ferry v. King Co., 141 U. S. 668, 35 L. Ed. 895;

Snell v. Chicago, 152 U. S. 191, 38 L. Ed. 408;

Smith v. Jennings, 206 U. S. 276, 51 L. Ed. 1061.

II.

THE CONTRACT OF SALE DID NOT EX-EMPT THE PROPERTY FROM TAXATION UNDER ART. VII § 2 OF THE STATE CONSTITUTION, AND, IN ANY EVENT, THIS IS A LOCAL QUESTION

Counsel urge (p. 2) that such exemption existed. There are two arguments against that view.

(a) It depends upon the construction of the State Constitution and is not reviewable here.

Smith v. Jennings, 206 U. S. 276, 51 L. Ed. 1061;

King v. W. Va., 216 U. S. 92, 54 L. Ed. 396;

Hibben v. Smith, 191 U. S. 310, 48 L. Ed. 195;

French v. Taylor, 199 U. S. 274, 50 L. Ed. 189.

(b) The view suggested by counsel is not the law.

U. S. v. Pierce Co., 193 Fed. 529;

Gasaway v. Seattle, 52 Wash. 444;

Port of Seattle v. Yesler Estate, 83 Wash. 166;

State v. Snohomish Co., 71 Wash. 320;

Puyallup v. Lakin, 45 Wash. 368;

Public Schools of Iron Mountain v. O'Connor, 108 N. W. 426;

Territory v. Perrin, 83 Pac. 361;

Gachet v. New Orleans, 27 So. 348;

Prytania St. Market Co. v. New Orleans, 34 So. 797.

Puyallup v. Lakin involved property purchased by the City of Puyallup on which a lien for personal property taxes had attached. Mr. Justice Dunbar said, (p. 370):

"The second contention, that the property is not taxable because devoted to public use, we think cannot be sustained. If the property had a lien upon it when it was purchased by the municipality, the municipality like an individual would take the property subject to the lien. The collection of the tax might be an idle thing if all the assessment that was due on the property would go to the municipality, but such is not the case.

A portion of the money is due to the state, a portion to the county, and a portion to the school district, and such incorporations are entitled to their share of the money due."

Counsel suggest (p. 11) that *Raymond v. King County*, 117 Wash. 343, bears upon the soundness of *Puyallup v. Lakin*, 45 Wash. 368, on account of an expression of the Court in *State v. Snohomish County*, 71 Wash. 320. It is sufficient that the *Raymond* and *Puyallup* cases involved personal property, the *Snohomish County* case real property. In the latter case the Court said (p. 325):

"We are constrained to hold that the statute (Rem. & Bal. Code, § 9235), creating the lien as to real property taxes, makes the lien only incipient or inchoate on March 1, to become a complete and enforceable lien as of that date by relation, only upon the making of a valid levy.

"We are not blind to the fact that a contrary view finds apparent support in the decisions of this court in *Klickitat Warehouse Co. v. Klickitat County*, 42 Wash. 299, 84 Pac. 860, and *Puyallup v. Lakin*, 45 Wash. 368, 88 Pac. 578. Those cases, however, construe only that part of the lien statute relating to taxes on personal property."

Moreover the court in the *Raymond* case ex-

pressly stated that "*the principle of the cases is not applicable to the present situation.*"

Mr. Justice Mitchell, in the departmental opinion at bar, recognized the distinction in the rule between *real* and *personal* property tax liens, saying (Tr. 169) :

"As to the lien, the statute lays down one rule for real property and another for personal property. That, of course, is a matter of legislative policy, unimportant to the courts except as necessity arises to keep the difference clearly in mind. That difference is pointed out in the case of *State v. Snohomish County*, 71 Wash. 320, 128 Pac. 667."

The question raised in the *Raymond* case was whether personal property not covered by a specific tax for a given year was subject to its lien in the hands of a third party, the opinion being in the negative. That is the sole point decided and has no application to the other cases, nor to the case at bar.

United States v. Pierce County, 193 Fed. 529, construed the real property clause of § 9235, Judge Donworth observing, (pp. 531-532) :

"The determinative question in the present controversy, therefore, is whether the taxes in question were imposed before or after the acquisition of the property by the United States. If they were imposed before, they would continue to constitute a valid lien on

the premises, though even in such case the acquisition of the property by the general government would withdraw it from the jurisdiction of all state officers, and resort for the enforcement of any lien thereon would have to be had to the tribunals of the United States. * * *

"In case, however, the tax was imposed after the acquisition of the property by the United States, it is wholly null and void. I think it was so imposed. Consideration of numerous sections of the taxation law of the State of Washington and of the general scheme embodied in those sections makes it plain that March 1st is fixed as the arbitrary date for the beginning of the taxation year. At that time the assessor and his deputies begin their task of valuing all the property in the county, fixing the valuation as of that date. The actual valuation necessarily consumes the work of a number of men for several months. On completion of the assessment it is submitted to the Board of Equalization, which meets in August, and it is subject to entire revision by that body. Still later the corporate authorities of the several cities, towns and school districts determine upon the amount of revenue needed for their respective purposes, and in October the Board of County Commissioners, and the

other authorities on whom the statute has conferred the taxing power, levy the tax. While I entertain no doubt that it is within the power of the state to treat the entire taxation proceeding as having been taken at some definite date, so far as concerns the general mass of property (as held by the Supreme Court of Minnesota in *State v. Northwestern Tel. Exchange Co.*, 80 Minn. 17, 82 N. W. 1090), a different rule must apply to property which, while the taxation proceeding is still incomplete, passes under the dominion and exclusive jurisdiction of the United States. The transfer of title to the United States operates to withdraw the property from all the effects of subsequent state action and subjects it to the sole jurisdiction of the United States. As to such property all incomplete state proceedings must fall."

(c) The question as to the effect upon the tax by reason of the fact that the City acquired title to the property *after* the lien of the tax had attached rests upon the construction, not the validity, of the local law and is not reviewable.

The taxing power of the state is never presumed to be relinquished, and it exists unless the intention to relinquish it is declared in clear and unambiguous terms, admitting of no other reasonable construction.

Southwestern R. Co. v. Wright, 116 U. S. 231, 29 L. Ed. 626.

An exemption from taxation must be clearly defined and founded upon plain language, without doubt or ambiguity.

Bank of Commerce v. Tennessee use of Memphis, 161 U. S. 134, 40 L. Ed. 645.

Exemption from taxation is not favored by law, and will not be sustained unless such clearly appears to have been the intent of the legislature; and every reasonable doubt should be resolved in favor of the taxing power.

Yazoo & M. Valley R. Co. v. Adams, 180 U. S. 1, 45 L. Ed. 395.

The taxing power is essential to the existence of government, and exemption from taxation must clearly appear.

Wilmington & W. R. Co. v. Alsbrook, 146 U. S. 279, 36 L. Ed. 972.

Exemptions from taxation are regarded as in derogation of the sovereign and of the common right, and therefore not to be extended beyond the exact and express requirements of the language used, construed *strictissimi juris*.

Yazoo & M. Valley R. Co. v. Thomas, 132 U. S. 174, 33 L. Ed. 302.

In *Covington v. Kentucky*, 173 U. S. 231, 43 L. Ed. 679, Mr. Justice Harlan stated (U. S. 237, L. Ed. 682):

"However much we may doubt the sound-

ness of any interpretation of the state constitution implying that lands and buildings are not public property used for public purposes when owned and used under legislative authority by a municipal corporation one of the instrumentalities or agencies of the State, for the purpose, and only for the purpose, of supplying that corporation and its people with water, and when the net revenue from such property must be applied in the improvement of public ways, we must assume, in conformity with the judgment of the highest court of Kentucky, that § 170 of the constitution of that Commonwealth cannot be construed as exempting the lands in question from taxation.

* * * * *

"A municipal corporation is a public instrumentality established to aid in the administration of the affairs of the State. Neither its charter nor any legislative act regulating the use of property held by it for governmental or public purposes, is a contract within the meaning of the Constitution of the United States. If the legislature choose to subject to taxation public property held by a municipal corporation of the State for public purposes, the validity of such legislation, so far as the national Constitution is concerned, could not be questioned."

We, therefore, submit that the property was taxable and that the decision of the Washington court to that effect is binding upon this Court and raises no federal question.

III.

THE TAX IS A VALID EXERCISE OF THE STATE'S TAXING POWER AND VIOLATES NO PROVISION OF THE FEDERAL CONSTITUTION

(a) CLASSIFICATION OF PROPERTY AND DECLARING THE SAME TO BE EITHER PERSONAL OR REAL PROPERTY FOR TAXATION PURPOSES, IS A LEGISLATIVE QUESTION.

In *Moeller v. Gormley*, 44 Wash. 465, a leasehold interest in land was assessed as personal property. The Court held it should have been assessed as real property under the revenue statute defining real property for purposes of taxation.

Later the Court held in *Metropolitan Bldg. Co. v. King County*, 62 Wash. 409, that a leasehold interest in land should be taxed as personal property because the statute had been so amended. It was said (p. 410):

"It has been heretofore held that a leasehold should be taxed as real property. *Moeller v. Gormley*, 44 Wash. 465, 87 Pac. 507. But the legislature has since provided otherwise.

"For the purposes of assessment and

taxation all leases of real property and leasehold interests therein for a term less than the life of the holder, shall be and the same are hereby declared to be personal property.' Laws 1907, p. 206, § 1 (Rem. & Bal. Code, § 9094).

"We are bound by the statute, therefore, to determine the value of the leasehold as personal property."

In *Northern Pac. R. Co. v. State*, 84 Wash. 510, it was urged that the assessment *in solido* of real and personal property of a railroad for taxation purposes was in violation of § 3, of Art. VII, of the state Constitution. Justice Parker said, (p. 539) :

"We are reminded by counsel for appellant of the provisions of § 3, of Art. VII, of our state Constitution, reading as follows:

" 'The legislature shall provide by general law for the assessing and levying of taxes on all corporation property as near as may be by the same methods as are provided for the assessing and levying of taxes on individual property.' "

"The framers of this constitutional provision evidently recognized that it might be desirable, and even more conducive to the rule of uniformity prescribed by other sections of the constitution, that corporate property, by reason of the peculiar nature of

much of such property, so far as the intangible elements entering into its value is concerned, be assessed by a method differing in some degree from that employed in the assessing of other property. *We are of the opinion that the mere fact that the assessing of appellant's operating property as a unit by the state board of tax commissioners as prescribed by the law relating to assessment of railway operating property, instead of by the county assessors as other property is to be assessed under the general revenue laws, is not violative of this provision of the constitution; so long as such property is charged by the same rate of levy and its assessed value measured by the same standard as other property within the state. There is no question here involved as to the rate of levy; and we think we have already demonstrated that the measure of value applied to appellant's operating property is the same as that applied to other property within the state for the purpose of taxation."*

In the case at bar, there is no question involved as to the rate of levy, nor as to valuation. The sale was for \$15,000,000.00. The property was valued at \$12,000,000.00, exclusive of some incidental non-operating real estate, which was not taxed and had an assessed value of \$60,150.00 (Tr. 166), or a full value of \$120,300.00, mak-

ing \$12,120,300.00 value for property sold for \$15,000,000.00. Under the local law 50% of the assessment is taken as the assessed valuation (Sec. 9112). On that basis the assessed valuation should have been \$6,000,000.00. The State Board of Equalization, however, lowered it to \$5,640,000 to compensate for valuation inequalities in the different counties (Sec. 9204). It is thus plain that the valuation is *just* and was *equalized* by the State Board of Equalization. The rates of levy apply alike to all property similarly situated. Hence, valuation and rate of levy, the two requirements of the Washington Constitution are fully met in this tax.

In *Nathan v. Spokane County*, 35 Wash. 26, the Court said (p. 31):

"The object and intent of the framers of the constitution was, that all property not exempt by virtue of the provisions of such instrument should bear a tax in proportion to its value; that the listing, assessing, levy, enforcement, and collection of taxes, subject to certain limitations unnecessary to notice in this connection, should be in the discretion of the legislature. *The expediency of such enactments, within the limitations prescribed by this constitution, constitutes a subject-matter with which the courts will not inter-meddle.*"

In *Johnson, Collector v. Roberts*, 102 Ill. 655, it was said (p. 659):

“* * * *it is contended that all permanent fixtures become and are a part of the land, and pass with it; that the engine and boilers are such fixtures, and therefore the presumption is they were assessed and valued as a part of it. This is doubtless true at common law, and is true as between grantor and grantee, but for the purposes of taxation the legislature has changed the rule. It is, however, as we understand the argument of counsel, contended the legislature has no power to make such fixtures personal property. It is conceded that the legislature is invested with and may exercise all governmental power, unless restricted by the State constitution, or the power has been delegated to the general government, or the Federal constitution has prohibited its exercise. No reason is perceived why the General Assembly, if so disposed, may not declare every species of property personal, and subject it to all of the incidents of personalty; or why it may not, for the purposes of taxation, require any portion of real estate, or any of its parts or accessories, to be listed, taxed, and sold for the payment of the taxes thereon, as personal property, and authorize the person purchasing to detach and remove the*

parts, whether it be standing trees, crops, or even windows or doors of houses or dwellings. *The power no doubt exists, and the legislature is the sole judge of the necessity and expediency of its exercise.*"

In *Central Iowa Ry. Co. v. Board of Supervisors*, 25 N. W. 128, the rule was stated (p. 129):

"We think it is competent, and not in conflict with any provision of the constitution of this state or of the United States, for the state to provide that *any particular class of property belonging to all corporations of the same character, and which possess the same rights and privileges, may be assessed in the same manner and by the same tribunal, and that the property of individuals and other corporations may be assessed by other officers and at different times.* But be this as it may, it is, we think, competent for the general assembly to provide that, for the purposes of taxation, all railroad property should be regarded as personal and taxed accordingly. *Cooley, Tax'n.*, 273, 274. This being so, the statute in question cannot be regarded as unconstitutional, because all personal property of all persons and corporations must be assessed each year. It is true that the statute does not in terms provide that the right of way shall be assessed as

personalty, but is provided that it shall be assessed each year as is other personal property. It is fundamental that a statute should not be declared unconstitutional unless it is clearly so. All railroad property of every kind and description, for the purpose of taxation, is regarded as of the same character, including the gross earnings of the road. *The whole mass of such property, under the statute, may be regarded as real or personal property for the purposes of taxation; and if essential to the validity of the statute in question, it should be regarded as personal property.*"

The case of *Missouri, K. & T. Ry. Co. v. Board of Com'rs. of Labette County*, 59 Pac. 383, is a leading case and on all fours with the case at bar. In that case an assessment had been levied for tax purposes on the roadbed, track and right-of-way as personal property. It was contended that this action contravened the state constitution as to uniformity and equality of assessment for taxation, and also the Fourteenth Amendment to the Federal Constitution.

The Court ruled against both of these contentions, saying (p. 384):

"Under paragraph 6873, Gen. St. 1889, all property used or held by a railway company for the purpose of operating its railroad, including its roadbed, right-of-way, etc., is to

be appraised and assessed as *personal property*. The statute declaring such property *personal property for the purposes of assessing a tax against it*, it follows that such tax must be collected as a tax upon *personal property*, and it is a tax due upon *personal property*. The legislature had the power to enact the statute declaring the right of way, roadbed, and other property held or used in the operation of the railroad to be *personal property for the purposes of taxation*, and the ruling of the trial court was correct."

Cited with approval in

State v. Back, 100 N. W. 952;

Chicago, etc., R. Co. v. State, 108 N. W. 557.

And in *Bloxham v. Consumers' Electric Light & Street R. Co.*, 29 L. R. A. 507, the Court declared (p. 511):

"The state by its legislature has ample power to choose *its own method of collecting its taxes*. When the method chosen violates no constitutional provision, no court can require it to adopt any other method."

See also:

Mich. Cent. R. Co. v. Porter, 17 Ind. 380;

Portland, etc., R. Co. v. Saco, 60 Me. 196;

Oskaloosa Water Co. v. Board, etc., 15 L.

R. A. 296;

Louisville, etc., R. Co. v. State, 25 Ind. 177.

It was long since declared in *Heilig v. Puyallup*, 7 Wash. 29, at p. 31, that

"There is no vested right, either in the corporation or in the citizen, to have property assessed in any particular way, and those matters, as are all matters pertaining to corporations of this class, are entirely within the control of the legislature."

League v. Texas, 184 U. S. 156, 46 L. Ed. 478.

Later, with respect to corporation taxation, the Court said in *Ridpath v. Spokane County*, 23 Wash. 436, at (p. 440):

"The methods of taxation of banks and of domestic corporations such as this mining company are different. The classification of property for assessment, where uniformity and equality exist in the classes, is a matter of legislative policy. In the taxation of banks the legislature has chosen to have the assessment on the shares of the capital stock; in that of corporations, as this, it has directed the assessment of all the property to the corporation."

Passing upon this identical question the Court remarked, in *Chicago, etc., Ry. Co. v. State*, 108 N. W. 557, at (p. 585):

"Reference is made as to the facts as to street railway property, and particularly that of interurban railroads operated by elec-

tricity, and some other property not belonging to railway companies, having to do with transportation of some sort, being taxed by a different method than ordinary railroad property, as violating the constitutional rule of uniformity. That seems to be sufficiently answered by what is said elsewhere in this opinion, as the right of the legislature to classify property under § 1, Art. VIII, some to be taxed and some to be exempt, so long as each particular class or subclass has real distinctions, reasonably specializing it as to other property. The discretion of the legislature in this field is so broad that it is not competent for the court to mark the constitutional limitations of it other than at the farthest one might go without transcending all reason."

In *Missouri, K. & T. Ry. Co. v. Miami Co.*, 73 Pac. 103, it was observed, (p. 105):

"The power to thus classify property for the purpose of taxation appears to be generally conceded. Cooley on Taxation (2d Ed.) 366, says: 'It is customary to classify property for taxation as real and personal, and to assess the two classes on somewhat different principles. The classification is commonly made on common-law distinctions; but this is not necessarily the case, and it will frequently be found that the enumera-

tion of property in statutes as real or personal for the purpose of taxation differs considerably from what it would be for other purposes in the same state.' Desty on Taxation, p. 96, says: 'The legislature may classify the subjects of taxation. The division of property into real, personal, and mixed is a mere arbitrary division, which the legislature may or may not regard in the imposition of taxes. * * * The legislature may make any kind of property personalty for the purpose of taxation, although it be real estate by the common law, and for all other purposes.' "

(b) THAT SUCH CLASSIFICATION OF PROPERTY FOR PURPOSES OF TAXATION DOES NOT VIOLATE ANY PROVISION OF THE FEDERAL CONSTITUTION IS SETTLED LAW IN THIS COURT.

State R. R. Tax Cases, 92 U. S. 575, 23 L. Ed. 663;

Pittsburgh, C. C. & St. L. R. Co. v. Backus, 154 U. S. 421, 38 L. Ed. 1031;

Cleveland, C. C. & St. L. R. Co. v. Backus, 154 U. S. 439, 38 L. Ed. 1041;

Pac. Express Co. v. Seibert, 142 U. S. 339, 35 L. Ed. 1035;

Mich. Cent. R. Co. v. Powers, 201 U. S. 245, 50 L. Ed. 744;

N. P. Ry. Co. v. State, 84 Wash. 510, 147 Pac. 45;

Bell's Gap R. R. Co. v. Penn., 134 U. S. 232, 33 L. Ed. 892;

Minot v. Phila. etc. R. Co., 18 Wall. 206, 21 L. Ed. 888;

Columbus Southern R. Co. v. Wright, 151 U. S. 470, 38 L. Ed. 238;

Kidd v. Alabama, 188 U. S. 730, 47 L. Ed. 669;

W. U. Tel. Co., v. Indiana, 165 U. S. 304, 41 L. Ed. 725;

Merch. & Mfgs' Nat'l Bank v. Penn., 167 U. S. 461, 42 L. Ed. 236;

Am. Sugar Refining Co. v. La., 179 U. S. 89, 45 L. Ed. 102;

Adams Exp. Co. v. Ohio St. Auditor, 165 U. S. 194, 41 L. Ed. 683;

Kentucky R. R. Tax Cases, 115 U. S. 321, 29 L. Ed. 414.

Justice Bradley in *Bell's Gap R. Co. v. Penn.*, *supra*, said (U. S. 237, L. Ed. 895) :

"The provision in the XIVth Amendment, that no State shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries, and the property of charitable institutions. It may impose different specific

taxes upon different trades and professions, and may vary the rates of excise upon various products; *it may tax real estate and personal property in a different manner*; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the State Legislature, or the people of the State in framing their Constitution."

The *Bell's Gap* case was quoted with approval and a list of cases cited in *Michigan Cent. R. Co. v. Powers, supra*.

(c) THE RULE APPLIES AS WELL TO STREET RAILROAD PROPERTY AS TO OTHER CLASSIFICATIONS.

In *Detroit Citizens' St. Ry. Co. v. Common Council*, 86 N. W. 809, 85 N. W. 96, in considering the assessment of the street railway property in Detroit, the court said (p. 99):

"The propriety of treating aggregations of property as a unit is as natural and proper for the purposes of assessment as for sale, and this is especially so where the various articles are so essential to the purpose for which they are combined that the withdrawal of one or any class would destroy, or sub-

stantially impair, the use of all for the purposes to which in their new form they are adapted."

Savannah, etc. R. Co. v. Mayor, etc. of Savannah, 198 U. S. 392, 49 L. Ed. 1097;

People ex rel. Metro. St. Ry. Co. v. New York, 199 U. S. 1, 50 L. Ed. 65;

Detroit Citizens' St. Ry. Co. v. Common Council, 125 Mich. 673, 85 N. W. 96; 86 N. W. 809;

Chicago & N. W. Ry. Co. v. State, 108 N. W. 557;

W. U. Tel. Co. v. Indiana, 165 U. S. 304, 41 L. Ed. 725.

AS TO PRIVILEGES AND IMMUNITIES

Counsel next urge (pp. 24-43) that plaintiffs have been denied certain privileges and immunities accorded other real estate and its owners by the Constitution and laws of the State.

Their primary claim is that the general scheme for taxation in Washington is void, because it adopts one method for the assessment, levy and collection of real property taxes, and another for personal property taxes. They urge that, since they cannot pay their personal property taxes as real estate taxes are paid, they are thereby deprived of privileges and immunities accorded to payers of real property taxes.

Their secondary claim is that statutory classi-

fication of the Company's *operating* real estate, as personal property for taxation purposes, deprives the Company of privileges and immunities afforded to owners of other real estate not so classified.

We answer as follows:

If such claims are privileges and immunities resting in the local law, they constitute local questions not subject to review. If it is claimed that they are privileges and immunities, protected by the Fourteenth Amendment, then under the provisions of § 237 of the Judicial Code they can be reviewed only by *certiorari*.

But federal privileges and immunities are limited to such as appertain to *federal* citizenship as distinguished from *state* citizenship.

Rosenthal v. New York, 226 U. S. 260, 57

L. Ed. 212;

Slaughter House Cases, 16 Wall. 36, (83

U. S.) 21 L. Ed. 394;

Hutardo v. Calif., 110 U. S. 516, 28 L. Ed. 232;

Hibben v. Smith, 191 U. S. 310, 325, 48

L. Ed. 195;

Re Kemmler, 136 U. S. 436, 34 L. Ed. 519;

Kirtland v. Hotchkiss, 100 U. S. 491, 25 L. Ed. 558;

Castillo v. McConnico, 168 U. S. 674, 42

L. Ed. 622.

In the *Slaughter House Cases*, *supra*, the court declared (U. S. 74, L. Ed. 408) :

"Of the privileges and immunities of the citizens of the United States, and of the privileges and immunities of the citizen of the State, and what they respectively are, we will presently consider; but we wish to state here that it is only the former which are placed by this clause under the protection of the Federal Constitution, and that the latter, whatever they may be, are not intended to have any additional protection by this paragraph of the Amendment."

As Mr. Chief Justice Fuller observed in *Re Kemmler*, *supra*, (U. S. 436, L. Ed. 524) :

"The Fourteenth Amendment did not radically change the whole theory of the relations of the state and federal governments to each other, and of both governments to the people. The same person may be at the same time a citizen of the United States and a citizen of a State. Protection to life, liberty and property rests, primarily, with the States, and the Amendment furnishes an additional guaranty against any encroachment by the States upon those fundamental rights which belong to citizenship, and which the state governments were created to secure. The privileges and immunities of citizens of the United States, as distinguished

from the privileges and immunities of citizens of the States, are indeed protected by it; but those are privileges and immunities arising out of the nature and essential character of the national government, and granted or secured by the Constitution of the United States. *United States v. Cruikshank*, 92 U. S. 542 (23: 588); *Slaughter House Cases*, 83 U. S. 16 Wall. 36 (21: 394)."

Discussing this matter, the court said in *Kirtland v. Hotchkiss*, (U. S. 498, L. Ed. 562):

" * * * so long as the State, by its system of taxation, does not intrench upon the legitimate authority of the Union, or violate any right recognized or secured to the citizen by the Constitution of the United States, this court, as between the citizen and his State, can afford no relief against state taxation, however unjust, oppressive or onerous."

THE GENTLEMEN'S AGREEMENT

There is another reason why the Company should not be heard to claim privileges and immunities. Since 1914, all of its *non-operating* property in King County—real and personal—totaling about \$4,500,000 in value (Tr. 73), was assessed by the State Tax Commissioner under a *Gentlemen's Agreement* as personal property in a lump sum valuation and assess-

ment with its street railroad operating property. These properties included its water power plants for generating energy for light and power purposes, its transmission lines and its steam heating plant in Seattle (Tr. 80-82).

The Tax Commissioner, testified on this point (Tr. 81):

"An agreement on this matter was made in 1914 between the Assessor of King County, the tax agent of the Puget Sound Traction, Light & Power Company, and the State Board of Tax Commissioners, that the property should be assessed in this way. It was questionable from a legal standpoint, but the Assessor desired it in order to eliminate a large part of his work in carrying all these distinctions on the rolls. *The tax agent for the traction company desired it for the same purpose, that it saved much work in his office, and we could see no objection to it, except possibly an objection from a legal standpoint. Under what you might call a gentlemen's agreement between the two interested parties we agreed that the assessment might be made in this manner, and sanctioned it.*"

In other words, during each of the years 1914 to 1918 inclusive, the Company had one assessment, one tax bill, gave one check and received one receipt for all taxes on all its taxable property

in King County, all under the act in question and the gentlemen's agreement. Under the circumstances, plaintiffs cannot be said to have been deprived of any material right.

AS TO CASES CITED BY COUNSEL

We have examined the authorities relied on by counsel (pp. 24-43). While the rules there laid down are appropriate to the facts under review in those cases, they are inapplicable here.

To illustrate.

The first case cited (p. 29), *Malim v. Benthien*, 114 Wash. 533, involved a diking and drainage act, which provided for adjudication of maximum assessments for special benefits, which adjudication was to be final and conclusive as to the land owners, *but not as to the district commissioners*. This was held a denial of due process.

In the second case cited (p. 29), *State v. Robinson Co.*, 84 Wash. 246, the statute regulating the sale of "concentrated commercial feeding stuffs" was declared invalid under the state Constitution as exempting from the operation of the act cereal or flouring mills, permitting them to sell "mill bran, shorts, or middlings made in the regular process of manufacturing cereal or flour," without complying with the statutory regulations therein provided, while all others selling the same class of feed are required to submit thereto. This also was held a denial of due process of law.

In the third case cited (p. 29), *In Re Camp*,

38 Wash. 393, an ordinance was held invalid which forbade peddling fruits, vegetables, butter, eggs, etc., excepting by farmers disposing of produce grown by themselves, the court observing (p. 397):

"The manifest object of the section of the ordinance now under consideration is *regulation and not to raise revenue*, for the reason that the excluded persons are not permitted to peddle, even if they should pay a license tax. It has been held that a classification may be valid if the object of the legislation is revenue, and invalid if the object is regulation only. This distinction was recognized in *Rosenbloom v. State*, 64 Neb. 342, 89 N. W. 1053, 57 L. R. A. 922."

Johnson v. Wells Fargo Co., 239 U. S. 234, cited by counsel (p. 30) involved a rule of *valuation* under the Constitution of South Dakota, thus raising an essential element of due process of law.

Ewert v. Taylor, 160 N. W. 797, relied on by counsel (p. 32) involved the construction by a state court of its local law. It has no controlling force here.

AS TO THE MODE OF COLLECTION

That the method of collection is merely a matter of *remedy*, and not of contract right and the legislature under the local law has power to enact a change in the method of collection of taxes

levied and assessed under a former law was held in *Spokane Co. v. N. P. R. Co.*, 5 Wash. 89.

This court held in *League v. Texas*, 184 U. S. 156, 46 L. Ed. 478 (U. S. 158, L. Ed. 480):

"That a State may adopt new remedies for the collection of taxes and apply those remedies to taxes already delinquent, without any violation of the Federal Constitution, is not a matter of doubt. *A delinquent taxpayer has no vested right in an existing mode of collecting taxes.* There is no contract between him and the State that the latter will not vary the mode of collection."

The legislative power of taxation embraces the *modes of collection* as well as the right to levy taxes.

Nathan v. Spokane County, 35 Wash. 26;

Bloxham v. Consumers' Elec. Light & St.

R. Co., 29 L. R. A. 507;

Johnson, Collector v. Roberts, 102 Ill. 655;

Bell's Gap R. Co. v. Penn., 134 U. S. 232,

33 L. Ed. 892;

Pac. Exp. Co. v. Seibert, 142 U. S. 339, 35

L. Ed. 1035;

U. S. v. New Orleans, 98 U. S. 381, 25 L.

Ed. 225;

Meriwether v. Garrett, 102 U. S. 472, 26

L. Ed. 197;

Witherspoon v. Duncan (71 U. S.) 4 Wall.

210, 18 L. Ed. 339;

Thomas v. Gay, 169 U. S., 264, 283, 42 L. Ed. 740.

In *Meriwether v. Garret*, *supra*, the court said (U. S. 515, L. Ed. 205):

"The levying of taxes is not a judicial act. It has no elements of one. It is a high act of sovereignty, to be performed only by the Legislature upon considerations of policy, necessity and the public welfare. In the distribution of the powers of government in this country into three departments, the power of taxation falls to the legislative. It belongs to that department to determine what measures shall be taken for the public welfare, and to provide the revenues for the support and due administration of the government throughout the State and in all its subdivisions. *Having the sole power to authorize the tax, it must equally possess the sole power to prescribe the means by which the tax shall be collected, and to designate the officers through whom its will shall be enforced.*"

Legislation for the collection of delinquent taxes on real estate is valid, although there is a lack of similar legislation in respect to personal property.

Winona, etc. Land Co. v. Minnesota, 159 U. S. 526, 40 L. Ed. 247.

In the last mentioned case, the court said (U. S. 539, L. Ed. 252) :

" * * * it may well be that the legislature in view of the probabilities of changes in the title or situs of personal property might deem it unwise to attempt to charge it with back taxes, while at the same time, by reason of the stationary character of real estate, it might elect to proceed against that. At any rate, if it did so it would violate no provision of the Federal Constitution, and whether it did so or not was a matter to be determined finally by the supreme court of the state."

That real estate and personal property may be taxed in a different manner was declared by Mr. Justice Brewer, in *Florida C. & P. R. Co. v. Reynolds*, 183 U. S. 471, 46 L. Ed. 283. He said (U. S. 476, L. Ed. 286) :

"The question how far the provisions of the 14th Amendment interfere with a state's system of taxation has been more than once before this court. It was very carefully considered in *Bell's Gap R. Co. v. Pennsylvania*, 134 U. S. 232, 33 L. Ed. 892, 10 Sup. Ct. Rep. 533, and the general rule thus stated by Mr. Justice Bradley on page 237, L. Ed., p. 895, Sup. Ct. Rep. p. 535:

"The provision in the 14th Amendment, that no state shall deny to any person within

its jurisdiction the equal protection of the laws, was not intended to prevent a state from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries, and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products. *It may tax real estate and personal property in a different manner.* It may tax visible property only, and not tax securities for payment of money. It may allow deductions for indebtedness, or not allow them.

* * * We think that we are safe in saying that the 14th Amendment was not intended to compel the state to adopt an iron rule of equal taxation.' "

* * * * *

"Our conclusion is that, so far as the Federal Constitution is concerned, the legislature of Florida had the power to compel the collection of delinquent taxes from the railroad companies for the years 1879, 1880, and 1881, even though it made no provision for the collection of delinquent taxes for those years on other property."

We submit that this tax is valid and violates no provision of the Federal Constitution.

IV.

THE VALIDITY OF THE TAX IS IN NO WISE AFFECTED BY THE FACT THAT THE COMPANY'S STREET RAILROAD OPERATING PROPERTY IN BELLINGHAM WAS NOT ASSESSED AS PART AND PARCEL OF ITS SEATTLE SYSTEM

Counsel in their brief suggest this point (pp. 44 and 8). Bellingham is a city about one hundred miles away from Seattle, and in another county. The Company owns a street railway property there (Tr. 101). It too was assessed as a separate entity (Tr. 87).

The City and the Company, in the Ordinance for the purchase of the Seattle system, in the contract of purchase and in the deed, treated the Seattle street railway system as a separate entity. (Exhibits "A" and "B", Tr. 103, 138).

The statute, (§ 9142) provides that the term "property of the railroad company"

" * * * shall include all franchises, right-of-way, roadbed, tracks, terminals, rolling stock equipment and other real and personal property of such company, *used or employed in the operation of the railroad.* * * *"

Also that the word "railroad" shall be considered as including "every kind of street railway."

The contract between the company and the city provides that the city shall acquire the "street railway system of the company in the city and

certain real and personal property and equipment used and useful in connection therewith." (Exhibit "A", Tr. 125).

We can understand how the mileage and property of a steam railroad in Seattle is but an element of the property "used or employed in the operation of the railroad," but we cannot follow counsel in their contention that the Seattle system is not a separate entity and that the Company did not sell a complete street railway system to the City, including all the property "used or employed in the operation of the street railway." The Company and the City contracted together that it was. They cannot now be heard to say that it was not. Moreover, this point turns upon the construction, and not the validity of the local law and is not reviewable here.

V.

THE METHOD PRESCRIBED BY LOCAL LAW FOR TAXATION OF TELEPHONE AND TELEGRAPH PROPERTY HAS NO BEARING UPON THE CASE

Counsel urge (pp. 48-62) that the court below should have construed the act relating to taxation of telegraph and telephone property to be in *pari materia* with the statute for taxation of street railroad operating property, that failure to do so deprived the Company of certain privileges and

immunities and violated the Fourteenth Amendment (p. 58).

The contention is untenable and is not supported by the authority relied on by counsel, *Royster Guano Co. v. Virginia*, 253 U. S. 412, 64 L. Ed. 989, (cited p. 58). In that case, one statute imposed an income tax on persons and corporations, under which a tax had been levied upon income from the Company's plants without the state as well as from within the state. Another statute exempted from income or *ad valorem* taxes Virginia corporations doing no business within the state except the holding of stockholders' meetings. Both of these laws related to corporations organized under the laws of Virginia. On one class an income tax was imposed. The other was exempt. This the court very properly held was a denial of the equal protection of the laws.

But that situation does not exist in the case at bar. Here, under our laws all individual and corporate property is subject to taxation. Here plaintiffs seek to avoid the validity of the tax by claiming irregularity in its assessment under the statute, the construction of which by the court below is binding on this court. That failing, in one breath they seek to elect the railroad statute as the method by which the tax should be collected, *i.e.*, as a *real property tax*; and in the next urge denial of the equal protection of the laws because

payment cannot be made as taxes on telegraph and telephone properties are paid, namely, as a *personal property tax*.

It is the *general body* of tax law with which the railroad act must be made to harmonize. The assessment of railroad property depends in part upon the provisions of general law and in part upon the railroad act. It in no wise rests upon the telegraph act.

The rule is that statutes to be in *pari materia* must relate to the *same* person or thing, or to the *same class* of persons or things.

United Society v. Eagle Bank, 7 Conn. 456;

People v. Aichinson (N. Y.), 7 How. Prac. 241;

Waterford & Whitehall Turnpike v. People, (N. Y.) 9 Barb. 161;

Town of Highgate v. State, (Vt.) 7 Atl. 898.

Central of Georgia Ry. Co. v. Wright, 207 U. S. 127, 52 L. Ed. 134, is relied on by counsel (p. 62). In that case certain back taxes were levied *without notice and without a hearing*. This the court held amounted to a denial of due process of law. No such situation exists here.

Lack of notice and hearing likewise was shown in *Turner v. Wade*, 254 U. S. 64, 65 L. Ed. 134 (cited p. 62), also construing the Georgia law.

The same principle controlled the decision in

Coe v. Armour Fertilizer Works, 237 U. S. 413, 59 L. Ed. 1027 (cited p. 62).

We submit that telegraph property constitutes one class and street railroad property another for taxation purposes and that variances in procedure for different classes raises no federal question.

VI.

THE STATUTE DOES NOT PROVIDE FOR THE "LISTING" OF THE COMPANY'S PROPERTY FOR TAXATION, AND THIS QUESTION RELATES ONLY TO THE CONSTRUCTION OF LOCAL LAW

This phase of counsel's argument appears on pp. 63-65 of their brief.

There are statutes in some states which provide for "listing" of a taxpayer's property for taxation purposes. We have heretofore pointed out that the *report* referred to in the statute is the legislative successor of the *statement* referred to in § 37 of the Act of 1897 and not the *listing* specified in § 15 of the 1897 Act.

Nor. Pac. R. Co. v. Carland, 3 Pac. 134, cited by counsel (p. 64) involved a *listing* statute the court observing (p. 147):

"Under the provisions of our statute it is the first duty of the assessor to demand a list of the property from the taxpayer, or the person whose property is to be assessed."

The California Railroad Tax cases, cited by

counsel (p. 65) in no wise conflict with our views. Those cases involved the construction of the California local law, particularly as to whether *fences* were taxable as part of a railroad roadbed or roadway, and as to whether certain *steamers* used by the railroad companies in their operations formed parts of the "railroad roadbed, rails or rolling stock." Both items were included in the valuation of the State Board of Equalization, and so included that the assessment therefor could not be segregated from the total.

Following the construction adopted by the local court, this Court affirmed the decision of the Circuit Court in holding that fences and steamers were assessable by local assessors and that the State Board of Equalization had placed a valuation unauthorized by law upon the Company's property, and so denied the railroads due process of law.

In the case at bar, the valuation is conceded. We submit that there is no merit in the claim that the report is a listing, also that the question is not reviewable, being a local one.

VII.

THE DECISION RESTS UPON INDEPENDENT GROUNDS NOT INVOLVING A FEDERAL QUESTION AND BROAD ENOUGH TO MAINTAIN THE JUDGMENT

It is familiar law that no review can be had in such cases.

Farson, Son & Co. v. Bird, 248 U. S. 268,
63 L. Ed. 233;

Gaar S. & Co. v. Shannon, 223 U. S. 468,
56 L. Ed. 510;

Petrie v. Nampa & M. Irrig. Dist., 248
U. S. 154, 63 L. Ed. 178;

Egan v. Hart, 165 U. S. 188, 41 L. Ed. 680.

Manifestly, the City has no rights in this case independent of the Company's. By its own course of conduct the Company has estopped itself to urge the denial of any rights under the Fourteenth Amendment. Its operating street railroad property has been assessed as a unit since 1907 without question. Indeed so salutary has the law been from the Company's standpoint that it entered into the *gentlemen's agreement* for the assessment as *personal property*, of all of its *non-operating* properties in King County, real and personal.

The law which it thus embraced for its own advantage, it should not now be allowed to spurn as unconstitutional.

Andrus v. Opelousas Police Bd., 6 So. 603,
5 L. R. A. 681;

Ross v. Lipscomb, 65 S. E. 451, 6 R. C. L.
93-95;

Leonard v. Vicksburg, etc. R. Co., 198 U.
S. 416, 49 L. Ed. 1108;

Pierce v. Somerset R. Co., 171 U. S. 641,
43 L. Ed. 316.

In *Pierce v. Somerset R. Co.*, *supra*, the court said (U. S. 648, L. Ed. 319):

"It is thus seen that there were two questions determined by the state court: One related to the validity of the statutes passed subsequently to the execution of the mortgage, the court holding them valid, and that they did not impair the obligation of the contract contained in the mortgage. That is a Federal question. The other related to the defense of *estoppel* on account of laches and acquiescence, which is not a Federal question. Either is sufficient upon which to base and sustain the judgment of the state court. In such case a writ of error to the state court cannot be sustained. *Eustis v. Bolles*, 150 U. S. 361 (37:1111); *Rutland Railroad Co. v. Central Vermont Railroad Co.*, 159 U. S. 630 (40:284); *Seneca Nation v. Christy*, 162 U. S. 283 (40:970).

"A person may by his acts or omission to act waive a right which he might otherwise have under the Constitution of the United States, as well as under a statute, and the question whether he has or has not lost such right by his failure to act, or by his action, is not a Federal one."

The decision on this point turns on a construction of general law and raises no Federal question.

In *Sayward v. Denny*, 158 U. S. 180, 39 L. Ed. 941, Mr. Chief Justice Fuller, declared the rule that (U. S. 186, L. Ed. 943):

“ * * * the decisions of state tribunals in respect of matters of general law cannot be reviewed on the theory that the law of the land is violated unless their conclusions are absolutely free from error.”

VIII.

UNDER THE LOCAL LAW, THE FINAL TEST IS THE SUBSTANTIAL JUSTICE OF THE TAX ITSELF

As construed by the state court, the validity of a tax is in no wise affected by any valid method adopted, or discretion exercised, by the assessing officer so long as the result is substantial justice of the tax itself.

Puget Sound Agr. Co. v. Pierce Co., 1 Wash. Ter. 159;

Eureka District Gold Mining Co. v. Ferry Co., 28 Wash. 250;

Doty Lbr. & Shingle Co. v. Lewis Co., 60 Wash. 428;

Phillips v. Thurston Co., 35 Wash. 187;

Smith v. Newell, 32 Wash. 369.

The rule, as announced by Mr. Justice Fullerton, in *Smith v. Newell*, *supra*, is apposite here. He said, (p. 374):

“The state has power to levy the tax orig-

inally, and power to more specifically apportion it after it was levied. By its final action it has charged the land with no more than its just share of the public tax. It has violated no constitutional right of the appellants. Before declaring the lien of the tax irrevocable, it has given them their day in court, where they had the opportunity to dispute every question going to the right and power of the state to charge the property with the tax. Despite this opportunity, it has not been shown that the property has been charged with a single dollar that it ought not, in justice and right, to be charged with. Surely, where these conditions appear, the courts ought not to declare the tax void because of the mere omission of a ministerial officer to perform a statutory duty. When a tax is declared void, the effect is always to release certain property of its just proportion of the public taxes, and unjustly increase that of other property. On the plainest principles of equity and justice, therefore, the courts ought to insist that a showing of injury incapable of being corrected be made, before it declares the tax void."

In *Green v. Frazier*, 253 U. S. 233, 64 L. Ed. 878, Mr. Justice Day speaking for the court said (U. S. 239, L. Ed. 881):

"The taxing power of the states is primar-

ily vested in their legislatures, deriving their authority from the people. When a state legislature acts within the scope of its authority it is responsible to the people, and their right to change the agents to whom they have intrusted the power is ordinarily deemed a sufficient check upon its abuse. When the constituted authority of the state undertakes to exert the taxing power, and the question of the validity of its action is brought before this court, every presumption in its favor is indulged, and only clear and demonstrated usurpation of power will authorize judicial interference with legislative action."

SUMMARY

The issues in this case are simple. The matters relied on by counsel depend upon the construction of local law and upon questions of general law sufficient to sustain the judgment. Every essential of due process of law exists here, a taxing statute, a tax for public purposes, jurisdiction over subject matter, property subject to taxation, an assessment within the time and in the manner prescribed by law, review before an equalizing board upon notice and a hearing in court. This satisfies the due process clause of the Federal constitution. The property was classified for taxation and taxed as a unit as personal prop-

erty. This tax was lawful, the valuation was just, the rate of levy was the same as for all other property similarly situated. No question of equal protection of the laws is involved.

We respectfully submit that both writs of error should be dismissed for want of jurisdiction, or, if this court has jurisdiction, that the decision should be affirmed.

Respectfully submitted,

MALCOLM DOUGLAS,

HOWARD A. HANSON,

Counsel for Defendants in Error.

APPENDIX

The instant statute, printed in Plaintiff in Error's brief (pp. 68-81 and 98) appears in the Code, §§ 9141 to 9152 inclusive. The telegraph Act appears as §§ 9171-9181 inclusive.

§ 9092. REALTY DEFINED—Real property for the purposes of taxation shall be construed to include the land itself, whether laid out in town lots or otherwise, and all buildings, structures and improvements, or other fixtures of whatsoever kind, thereon, and all rights and privileges thereto belonging, or in any wise appertaining, and all quarries and fossils in and under the same, which the law defines, or the courts may interpret, declare and hold to be real property under the letter, spirit, intent and meaning of the law, for the purposes of taxation.

§ 9093. PERSONALTY DEFINED—Personal property for the purpose of taxation shall be construed to embrace and include, without especially defining and enumerating it, all goods, chattels, stocks or estate; all improvements upon lands, the fee of which is still vested in the United States, or in the state of Washington, or in any railroad company or corporation, and all and singular of whatsoever kind, name, nature and description, which the law may define or the courts interpret, declare and hold to be personal prop-

erty, for the purpose of taxation, and as being subject to the laws and under the jurisdiction of the courts of this state, whether the same be any marine craft, as ships and vessels, or other property holden under the laws and jurisdiction of the courts of this state, be the same at home or abroad: Provided, that the ships or vessels registered in any custom-house of the United States within this state, which ships or vessels are used exclusively in trade between this state and any of the islands, districts, territories, states of the United States, or foreign countries, shall not be listed for the purpose of or subject to taxation in this state, such vessels not being deemed property within this state: Provided, that mortgages, notes, accounts, moneys, certificates of deposit, tax certificates, judgments, state, county, municipal and school district bonds and warrants shall not be considered as property for the purpose of this chapter, and no deduction shall hereafter be allowed on account of an indebtedness owed.

§ 9094. LEASES TAXED AS PERSONAL PROPERTY—For the purposes of assessment and taxation all leases of real property and leasehold interests therein for a term less than the life of the holder, shall be and the same are hereby declared to be personal property.

§ 9095. **STANDING TIMBER—PERSONALTY**—Standing timber owned separately from the ownership of the land upon which the same may stand or be growing, for the purposes of assessment and taxation shall be considered and is hereby declared to be personal property.

§ 9140. **IMPROVEMENTS ON PUBLIC LANDS LISTED TO WHOM**—The assessor must assess all improvements on public lands as personal property until the settler thereon has made final proof. After final proof has been made, and a certificate issued therefor, the land itself must be assessed, notwithstanding the patent has not been issued.

§ 9204. **DUTIES OF STATE BOARD OF EQUALIZATION**—The state auditor, a member of the public service commission of Washington, to be designated by the governor, and the commissioner of public lands shall constitute the state board of equalization. The state auditor shall be the president of the board, and the commissioner of public lands shall be secretary thereof. The board shall remain in session not to exceed twenty (20) days; may adjourn from day to day, and employ such clerical assistance as may be deemed necessary to facilitate its labors; *provided*, that the expense of such board shall not exceed the sum of five hundred dollars (\$500) in any

one year. The said board shall meet annually, on the first Monday in September, at the office of the state auditor, and shall examine and compare the returns of the assessment of the property in the several counties of the state, and proceed to equalize the same, so that each county in the state shall pay its due and just proportion of the taxes for state purposes for such assessment year, according to the ratio the valuation of the property in each county bears to the total valuation of all property in the state.

First. They shall classify all property, real and personal, and shall raise and lower the valuation of any class of property in any county to a value that shall be equal and uniform, so far as possible, in every part of the state, for the purpose of ascertaining the just amount of tax due from each county for state purposes.

Second. The secretary shall keep a full record of the proceedings of the board, and the same shall be published annually by said commissioner of public lands.

Third. They shall have authority to adopt the rules and regulations for the government of the board, and to enforce obedience to its orders in all matters in relation to the returns of county assessments, and the equalization of values by said board.

The said board of equalization shall apportion the amount of tax for state purposes as required by law to be raised in the state among the several counties therein, in proportion to the valuation of the taxable property therein for the year as equalized by the board, and shall also ascertain the gross amounts justly due from each county for military, state bond interest, and state bond sinking fund taxes, at rates and limitations fixed by law. It shall be the duty of the county auditor in each county when he shall have received the report of the state auditor, as provided in § 9205, to determine the rates per cent necessary to raise the taxes required for state purposes as determined by the state board of equalization, and place the same on the tax-rolls of the county as provided by law.

§ 9206. TRANSMISSION TO COUNTY ASSESSOR AFTER 1911—When the state board of equalization shall have completed their equalization, the state auditor shall, within ten days after the adjournment of said board, transmit to each county assessor a transcript of the proceedings of the board, specifying the amount to be levied and collected on said assessment-books for state purposes for such year. He shall also certify to each county assessor the amounts due to each road and

unpaid from such county for the seventh preceding year, which sum shall be added to the amount levied for the current year.

§ 9220. NOTICE OF COLLECTION—On receiving the tax-books from the county auditor the treasurer shall post all real property taxes from said assessment-books to the treasurer's tax-roll or ledger, and shall then give notice by publication in some newspaper having general circulation in the county, once in each of three consecutive weeks, that the tax-books have been turned over to him for the collection of taxes thereon, on and after the first Monday of February. He shall, when requested, notify each taxpayer in his county, at the expense of the county, having printed on said notice the name of each tax and the levy made on the same, of the amount of his real and personal property, and the total amount of tax due on the same; and from and after the taking effect of this act the county treasurer shall be the sole collector of all delinquent taxes and all other taxes due and collectible on the tax-lists of the county, and all other county officers having tax-lists in their possession are hereby directed to deliver up said lists to the treasurer of their respective counties, to the end that such treasurer shall be the sole collector of all taxes levied therein.

§ 9223a. PENALTY, WHEN DELINQUENT—
DISTRAINT FOR, ETC.—On the first Monday in February succeeding the levy of taxes, the county treasurer shall proceed to collect all personal property taxes. He shall give notice by mail to all persons charged with personal property taxes, and if such taxes are not paid on or before the fifteenth day of March of such year, he shall forthwith proceed to collect the same. In the event that he is unable to collect the same in due course, he shall prepare papers in distraint, which shall contain a description of the personal property, the amount of the tax, the amount of accrued interest at the rate of fifteen per cent per annum from March 15th, and the name of the owner or reputed owner, and shall file the same with the county sheriff, who shall immediately without demand or notice distrain sufficient goods and chattels belonging to the person charged with such taxes to pay the same with interest at the rate of fifteen (15) per cent per annum from the fifteenth day of March of such year, together with all accruing costs, and shall immediately proceed to advertise the same by posting written notices in three public places in the county in which such property has been levied upon, one of which places shall be at the county courthouse, such notices to state

the time when and place where such property will be sold. If the taxes for which such property is distrained and the interest and cost accruing thereon are not paid before the date appointed for such sale, which shall not be less than ten (10) days after the taking of such property, such sheriff shall proceed to sell such property at public auction, or so much thereof as shall be sufficient to pay such taxes with interest and costs, and shall pay to the treasurer the money so collected at such sale, and if there be any overplus of money arising from the sale of any personal property, the treasurer shall immediately pay such overplus to the owner of the property so sold, or to his legal representative; *provided*, that whenever it shall become necessary to distrain any standing timber owned separately from the ownership of the land upon which the same may stand, or any fish-trap, pound-net, reef-net, set-net, drag-seine fishing location, which shall be deemed to have been distrained and taken into possession when the said sheriff shall have, at least thirty (30) days before the date fixed for the sale thereof, filed with the auditor of the county wherein such property is located, a notice in writing citing that he has distrained such property, describing it, giving the name of the owner or reputed owner, the amount

of tax due with interest, and the time and place of sale. A copy of said notice shall also be sent to the owner or reputed owner at his last known address by registered letter at least thirty (30) days prior to the date of sale; *and provided, further*, that if any personal property upon which taxes have been levied, but not paid, is about to be removed from the county where the same has been assessed, the county treasurer may demand such taxes without the notice provided for in this section, and if necessary may distrain sufficient goods and chattels to pay the same as provided in this act.

§ 9235. LIEN, WHEN ATTACHES — The taxes assessed upon real property shall be a lien thereon from and including the first day of March in the year in which they are levied until the same are paid, but as between a grantor and grantee such lien shall not attach until the first Monday of February of the succeeding year. The taxes assessed upon personal property shall be a lien upon all the real and personal property of the person assessed, from and after the date upon which such assessment is made, and no sale or transfer of either real or personal property shall in any way affect the lien for such taxes upon such property.

LAWS 1897, p. 143, § 15. Every person

required by this act to list property shall make out and deliver to the assessor, when required, a statement, verified by his oath, of all the personal property in his possession or under his control, and which, by the provisions of this act, he is required to list for taxation, either as owner or holder thereof, or as guardian, parent, husband, trustee, executor, administrator, receiver, accounting officer, partner, agent or factor; no person shall be required to list for taxation in his statement to the assessor any share or portion of the capital stock, or of any of the property of any company, association or corporation, which such person may hold in whole or in part, where such company, being required so to do, has listed for assessment and taxation its capital stock and property with the auditor of state, or as otherwise required under the laws of this state.

LAWS 1897, p. 152, § 37. At the same time that the lists or schedules as hereinbefore required to be returned to the county assessor, the person, company or corporation running, operating or constructing any railroad in this state shall return to the state auditor sworn statements or schedules as follows:

1. The whole number of miles of railway in the state, and where the line is partly out of the state, the whole number of miles with-

out the state and the whole number within the state, owned or operated by such corporation, person or association.

2. The value of the roadway, roadbed and rails of the whole railway, and the value of the same within the state.

3. The width of the right-of-way.

4. The number of each kind of all rolling stock used by such corporation, person or association in operating the entire railway, including the part without the state.

5. Number, kind and value of rolling stock owned, but used out of the state, either upon divisions of road operated by the party making the returns, or by and upon other railways.

Also showing in detail for the year preceding the first of January:

1. The gross earnings of the road.

2. The gross earnings of the road in the state, and where the railway is let to other operators, how much was derived by the lessor as rental.

3. The cost of operating the entire road, exclusive of sinking fund, expenses of land department, and money paid to the United States.

4. Net income for such year, and amount of dividend declared.

5. Capital stock authorized.

6. Capital stock paid in.
7. Funded debt.
8. Number of shares authorized.
9. Number of shares of stock issued.
10. Any other facts the state board of equalization may require.

11. A description of the road, giving the points of entrance into and the point of exit from each county, with a statement of the number of miles in each county. When a description of the road shall once have been given, no other annual description thereafter is necessary, unless the road shall have been changed. Whenever the road, or any portion of the road, is advertised to be sold for taxes, either state or county, no other description is necessary than that given by, and the same is conclusive upon, the corporation, person or association giving the description. No assessment is invalid on account of a misdescription of the railway or the right-of-way for the same. If such statement is not furnished as above provided, the assessment made by the state board of equalization upon the property of the corporation, person or association failing to furnish the statement is conclusive and final.

FILED
FEB 26 1923

WM. R. STANSBURY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 138

(1) PUGET SOUND POWER AND LIGHT COMPANY
AND (2) THE CITY OF SEATTLE, PLAINTIFFS IN
ERROR,

vs.

THE COUNTY OF KING (STATE OF WASHINGTON),
FRANK W. HULL, AS ASSESSOR OF COUNTY OF KING;
NORMAN M. WARDALL, AS AUDITOR OF COUNTY OF
KING, ET AL.

ON WRIT OF ERROR TO THE SUPREME COURT OF THE STATE
OF WASHINGTON.

MOTION TO REINSTATE CAUSE.

Now come Puget Sound Power and Light Company, (a
corporation) by its attorney of record James B. Howe, and
The City of Seattle, a municipal corporation, by Walter
F. Meier, Corporation Counsel, and respectfully move this
Honorable Court to set aside its order of February 19, 1923,

herein, dismissing this cause with costs for failure to comply with the provisions of paragraph 2 of Rule 10 of the Rules of Practice of this Honorable Court and to reinstate said cause upon the docket for argument, and as ground for said motion respectfully show:

1. That said cause having come on for hearing in the Supreme Court of the State of Washington upon an appeal, wherein the Puget Sound Power and Light Company alone and the Puget Sound Power and Light Company and The City of Seattle jointly were aligned in opposition to the County of King and its taxing officers as parties to the cause, final judgment was entered therein by said State Supreme Court on the 10th day of July, A. D. 1922, and thereafter writs of error from this Honorable Court to review said final judgment were duly allowed and perfected on the 22d day of September, 1922, and the cause on said writs was duly docketed in this Court on the 19th day of October, 1922.

2. The transcript of the record transmitted to this Court in response to the requirement of said writs of error is voluminous and contains much that may and should be omitted in printing as not requisite for the consideration of this Court in connection with the points assigned for error and intended to be relied upon in argument.

3. Immediately upon the docketing of said cause in this Court negotiations were instituted by representatives of the Puget Sound Power and Light Company with representatives of the City of Seattle and The County of King seeking to effect an agreement whereby all unnecessary portions of said transcript of the record might be omitted in printing and

expenses thereby kept down, and said negotiations were proceeding with reasonable prospects of an agreement being reached when notice of dismissal of the cause for failure to deposit with the Clerk of this Court a sum of money sufficient to cover the estimated sum total of Clerk's cost and expense of printing record, viz: \$965, reached the undersigned.

3. That considering the state of the finances of The City of Seattle, it was deemed desirable by representatives of the City to reduce the estimated expense of prosecuting its joint interest in the pending writ of error as much as possible before asking that appropriation to cover same should be made.

4. Both said Puget Sound Power and Light Company and The City of Seattle represent that the matters in issue between the parties to said cause are of grave public interest in that they involve the contested validity of State and municipal action in the light of provisions of the Constitution of the United States.

5. Puget Sound Power and Light Company and The City of Seattle lately have offered and hereby offer to deposit with the Clerk of this Honorable Court the total amount necessary to cover his estimate of Clerk's Costs and expenses of printing the record as above or as same may have been or may be modified, immediately upon the announcement of an order by this Court restoring above cause to the docket for argument, or within such limited time thereafter, considering distance from Washington and other circumstances of the respective movants, as the Court may impose.

6. As in the regular call of the docket it is highly improbable that this cause either will or can be called for

argument before the first Monday of October, next, and in order that the negotiations still pending for a reduction of the transcript of the record may be consummated, it is respectfully requested, the cause having been restored to the docket for argument as prayed and prompt deposit of the total amount heretofore called for having been made, that nevertheless the actual printing of the transcript may be delayed for such time, not exceeding say sixty days, with leave to the parties to the cause to file with the Clerk of this Court within the time limit specified, a stipulation as to the portions of the transcript of the record which may have been agreed should be omitted in printing.

Respectfully submitted,

JAMES B. HOWE,

Attorney for Puget Sound Power and Light Company.

WALTER F. MEIER,

Corporation Counsel, The City of Seattle.

FREDERIC D. McKENNEY,

Of Counsel.

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In the Supreme Court of the United States

OCTOBER TERM, 1922

PUGET SOUND POWER & LIGHT COMPANY and THE
CITY OF SEATTLE, *Plaintiffs in Error*

vs.

THE COUNTY OF KING, FRANK W. HULL, as Assessor
of King County, NORMAN M. WARDALL, as Auditor of
King County, and WM. A. GAINES, as Treasurer of King
County, *Defendants in Error*

*In Error to the Supreme Court
of the State of Washington*

**BRIEF OF PLAINTIFFS IN ERROR IN OPPOSITION
TO MOTION OF DEFENDANTS IN ERROR
TO DISMISS OR AFFIRM**

(Note—Italics in this brief are counsels' unless otherwise stated)

Defendants in error have moved to dismiss the writs of error in this cause or to affirm upon the record.

We answer the contentions of defendants in error in the order in which they are stated in their brief:

I

“Plaintiff in error, The City of Seattle, on the record has urged no federal question.”

The opinion of the Supreme Court of the State of Washington (R. 167-176), makes clear not only that the federal questions were urged by the City of Seattle and Puget Sound Power & Light Company, the appellants, in the supreme court of the state, but that the supreme court decided the federal questions adversely to such appellants.

In the opinion of the supreme court (R. 173), that court said:

“In the amendatory act of 1911 it is provided, ‘that all the operating property of street railroads shall be assessed and taxed as personal property.’ It is contended by the appellants that this plan violates both the Constitution of the state and the Fourteenth Amendment to the Constitution of the United States. The provisions of the respective constitutions invoked are those pertaining to the equal protection of the laws, a uniform and equal rate of assessment and taxation on all property in this state, and section 3 of article VII of the state constitution.

“One of the most exhaustive and instructive cases upon this subject is *Chicago & N. W. Ry. Co. v. State*, 108 N. W. 557. That case contains a lengthy discussion of the subject and ref-

erences to a large number of cases of the United States Supreme Court to show that this class of statutes does no violence to the Fourteenth Amendment to the federal constitution. . . . We are in accord with that view. (R. 174.)

“Lastly, it is contended that even assuming the validity in all its parts of the statutes under which the assessment was made by the state tax commissioner, nevertheless the administration of the statute by that official in the manner followed by him in making the assessment denied to the company and the city the equal protection of the law and deprived them of property without due process of law in contravention of the Fourteenth Amendment to the federal constitution. (R. 174.)

“Nor does the procedure or plan of administering the law that was adopted by the commissioner in making the assessment in this case in any way violate the Fourteenth Amendment to the federal constitution or any guaranty contained in the state constitution.” (R. 176.)

Under the following decisions of this court the motion to dismiss on this ground must be denied:

San Jose Land & Water Company v. San Jose Ranch Company, 189 U. S. 179, 180.

Dibble v. Bellingham Bay Land Company, 163 U. S. 69.

Loeb v. Columbia Township, 179 U. S. 472.

Chambers v. Baltimore & Ohio Railroad Co., 207 U. S. 142.

German Savings & Loan Society v. Dormitzer, 192 U. S. 127.

Montana ex rel. Haire v. Rice, 204 U. S. 291.

The claim that the act of February 21, 1911, Laws of Washington, page 62, entitled:

“An Act to amend section 12 of chapter 78, Session Laws of 1907, relating to the assessment of the operating property of railroads, approved March 6, 1907, and declaring an emergency.”

was unconstitutional and void under the Fourteenth Amendment to the Constitution of the United States, in that it deprived Puget Sound Power & Light Company of its property without due process of law and denied it the equal protection of the laws, was specifically raised upon the record in the trial court and was urged by the company in the supreme court of the state. The City of Seattle joined with the company in making such claim in its own behalf and the supreme court of the state denied such claim, both as to the city and the company and expressly decided that such act was not in violation of the Fourteenth Amendment. The city and the company further urged that such act as construed by the taxing officials of the state and as administered by the taxing officials of the state, and as construed by the trial court, deprived the city and the company of their property without

due process of law and denied them the equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States, and the supreme court of the state decided such contention against the city and the company and entered judgment denying such claim. (R. 44-55.)

II

"The writs of error were not filed within the ninety days limited by section 1003, Revised Statutes."

The only final judgment entered in the supreme court of the state was the judgment or decree of July 10, 1922. That judgment reads in part as follows: (R. 176.)

"IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

May Session, A. D. 1922

Monday, July 10, 1922

En Banc

No. 16497

(Omitting title.)

JUDGMENT

"This cause having been heretofore submitted to the court upon the transcript of the record of the Superior Court of King County and upon the argument of counsel, and the court having fully con-

sidered the same and being fully advised in the premises, it is now, on this *10th day of July, A. D. 1922*, on motion of Malcolm Douglas, Esq., of counsel for King County, et al.,

“CONSIDERED, ADJUDGED AND DECREED that the judgment of said superior court be and the same hereby is affirmed with costs. . . .”

The motion of defendants in error to dismiss because the writs of error were not issued and filed in the supreme court of the state within ninety days after the filing of the *opinion* of the supreme court is based upon the erroneous assumption that the Supreme Court of the United States has jurisdiction to review *opinions* of the supreme court of a state. The jurisdiction, however, is to review *final judgments* and *decrees*, not *opinions*. The time limitation of three months in which writs of error may be applied for is three months “*after entry of the judgment or decree complained of.*” (39 Statutes-at-Large, Chap. 448, Sec. 6, p. 727.)

Petitions for rehearing in the supreme court of the state of Washington are filed after the court has filed its opinion and *prior to judgment* and no judgment can be entered until the petition, if filed, has been disposed of. In jurisdictions where judgments are entered immediately upon the filing of opinions, such judgments, when timely petitions for re-hear-

ing are filed, do not become final until the petitions for rehearing are disposed of. Where, however, petitions for rehearing must be disposed of before judgment can be entered, opinions of the courts denying such petitions, not being judgments or decrees are not subject to review by writ of error. Writs of error can only review the judgments or decrees entered upon such opinions and not the opinions themselves.

Citizens Bank of Michigan City v. Opperman, 249 U. S. 448.

Chicago Great Western Railroad Co. v. Basham, 249 U. S. 164.

Andrews v. Virginian Railway Co., 248 U. S. 272.

In Washington, when the supreme court of the state has filed an opinion and a petition for rehearing has not been filed in time, or where if filed in time it has been denied, a judgment upon the opinion must be entered.

“Whenever a decision shall become final as herein provided, a judgment shall issue thereon.”

Remington’s Compiled Statutes of Washington, 1922, Sec. 10.

“It is the duty of the clerk of the supreme court
..... :

“2. To record the proceedings of the court.

"3. To keep the records, files and other books and papers appertaining to the court. . . .

"6. To keep the journal of the proceedings of the court and under the direction of the court to enter its orders, *judgments and decrees*."

Remington's Compiled Statutes of Washington, 1922, Sec. 77.

Dibble v. Bellingham Land Company, 163 U. S. 63, 69.

"The supreme court shall be a court of record and shall be vested with all power and authority necessary to carry into complete execution all its *judgments, decrees* and determinations in all matters within its jurisdiction, according to the rules and principles of the common law and the constitution and laws of this state."

Remington's Compiled Statutes, 1922, Sec. 2.

"The *judgments and decrees* of the supreme court shall be final and conclusive upon all the parties properly before the court."

Remington's Compiled Statutes of Washington, 1922, Sec. 14.

". . . . The clerk of the supreme court shall send down to the superior court from which the appeal was taken, a remittitur in the cause, which shall consist of the *judgment of the supreme court*, and a certified copy of the *opinion* of the court, in case any judgment or order appealed from was reversed or modified thereby."

Remington's Compiled Statutes of Washington, 1922, Sec. 1740.

"In all cases where a *final judgment* shall be rendered by the supreme court of this state in a cause wherein a temporary or final injunction has been granted and the party at whose instance such injunction was granted shall appeal from *such judgment* to the Supreme Court of the United States, such injunction shall remain in force during the pendency of such appeal if within sixty days after the rendition of such judgment of the supreme court of the state such appellant shall file with the clerk of the supreme court a bond. . . ."

Remington's Compiled Statutes of Washington, 1922, Sec. 1724.

Until, therefore, a judgment or decree has been entered upon the opinion filed by the supreme court, there is neither a final judgment nor decree of that court subject to review by writ of error.

"The judgment which we are asked to review by this writ was entered in the Circuit Court of La Crosse County, May 24, 1882. It is signed by the judge on that day, and is expressly dated as of that day, and is marked filed on that day over the signature of the clerk of that court. *This is the judgment—the entry of the judgment*—and on that day the plaintiff in error had a right to his writ, and on that day the two years began to run within which his right existed."

Polleys v. Black River Co., 113 U. S. 81, 83.

Marks v. Northern Pacific Railroad Co., 76 Fed. 943 (9th Circuit, Washington case).

Where there is no final judgment or decree there is no jurisdiction to review by writ of error.

Clarke v. McDade, 165 U. S. 168, 172, 174.

People of the State of Illinois ex rel. Gersch v. City of Chicago et al., 226 U. S. 451.

Coe v. Armour Fertilizer Works, 237 U. S. 413.

Simpkins' Federal Practice, pp. 1040, 1041.

Foster's Federal Practice, 5th Ed., Sec. 695.

United States Courts, Bunn, 2nd Ed. pp. 21, 22.

As the only judgment or decree of the supreme court of the state in the case at bar was that entered July 10, 1922, and as prior to the entry of that judgment there were only opinions but no judgment or decree of the supreme court of the state, and as the chief justice of the supreme court of the state allowed the writ of error to review that judgment, it is that judgment that this court upon writ of error has jurisdiction to review and not some opinion of the supreme court of the state filed prior to judgment. The record in the case at bar shows that the opinions of the supreme court of the state are designated as "*opinions*" while the judgment which the writ of error was sued out to review is designated "*judgment.*" There is no foundation for the contention of defendants in error

that the writs of error should have been sued out to review the opinions of the Supreme Court of the State of Washington as distinguished from the judgment of the Supreme Court of the State of Washington. We can safely claim that never before in the history of the Supreme Court of the State of Washington was it ever contended that the *opinions* of that court constituted judgments or decrees. The following cases demonstrate that that court has always clearly distinguished between *opinions* and *judgments or decrees*:

- State v. Tugwell*, 19 Wash. 238.
- Bartlett v. Reichennecker*, 5 Wash. 369.
- In re Patterson*, 98 Wash. 334, 338.
- Colvin v. Clarke*, 96 Wash. 282.
- Gould v. McCormick*, 75 Wash. 61, 64.
- King County v. Hill*, 1 Wash. 63, 69.
- Rupe v. Kemp*, 99 Wash. 371;
- Marsh v. Degeler*, 3 Wash. 71.
- Chaffee v. Hawkins*, 89 Wash. 130.
- Templeton v. Warner*, 89 Wash. 584.
- Barth v. Harris*, 95 Wash. 166.
- Gust v. Gust*, 70 Wash. 695.
- Inman v. Seattle*, 86 Wash. 603.
- Robertson v. Shime*, 50 Wash. 433.

The writs of error were allowed and filed September 22, 1922, which was within three months from July 10, 1922, the date when the judgment or

decree to be reviewed was rendered and entered in the supreme court of the state.

III

"No federal question is involved."

That federal questions are involved in this case and that the judgment of the supreme court could not have been rendered without determining them, and that the supreme court did determine them adversely to appellants, clearly appears by the record in this case (pages 37-55), by the opinion of the Supreme Court of the State of Washington and from the brief of plaintiffs in error filed in this court upon the merits, from which brief the following is quoted:

ARGUMENT

SPECIFICATION OF ERROR I

The Act of February 21, 1911, amending the Act of March 6, 1907, whereby real estate owned in fee by a street railroad company was singled out from the real estate of other corporations and of individuals and assessed and taxed as personal property, and thereby denied the privileges and immunities accorded by the Constitution and the statutes of the state to such other real estate and its owners, is in conflict with the Fourteenth Amendment:

1. It makes an arbitrary and illusory classification.

By such classification real estate owned in fee and used in street railroad operation and the owner of such real estate are denied the following privileges and immunities granted and allowed to other real estate and its owners.

1. The right of sale free from lien for taxes *at any time before the completion of the levy* of a tax on such real estate.

2. The right to pay the tax thereon on or before the 15th day of March in each year and receive a *discount* of three per cent.

3. The right to *prevent delinquency* by paying one-half of the tax before the *first day of June* and the other half before the *first day of December* in each year.

4. In case of delinquency, to remove such delinquency upon paying the tax with interest at the rate of *twelve per cent per annum* instead of at the rate of *fifteen per cent per annum*.

5. The right of *redemption for three years* after delinquency and thereafter until the entry of a decree of court foreclosing the tax lien and the issuance of a deed pursuant to such decree.

Street railroad real estate and its owners are subjected to the following burdens to which other real estate and its owners are not subjected:

1. The obligation to pay the tax *without discount* on or before the *15th day of March* in each year or become delinquent.

2. In case of delinquency to pay interest at the rate of *fifteen per cent per annum* instead of *twelve per cent per annum*.

3. To a sale of the property on *ten days' notice after delinquency* without any *decree of court* and without any right of redemption.

That these discriminations exist is demonstrated by the following quotations from the statutes (Section 11252 Remington's Compiled Statutes of Washington, 1922):

"Section 9219. The county treasurer shall be the receiver and collector of all taxes extended upon the tax-books of the county, whether levied for state, county, school, bridge, road, municipal or other purposes, and also of all fines, forfeitures or penalties received by any person or officer for the use of his county. All taxes upon *real property* made payable by the provisions of this act shall be due and payable to the treasurer as aforesaid on or before the *thirty-first day of May* in each year, after which date they shall become delinquent, and inter-

est at the rate of *twelve per cent per annum* shall be charged upon such unpaid taxes from the date of delinquency until paid: Provided, however, when the total amount of tax payable by one person is two dollars or more, then *if one-half of such taxes be paid on or before said thirty-first day of May*, then the *time of payment of the remainder* thereof shall be *extended* and said remainder shall be *due and payable on or before the thirtieth day of November following*; but if the remaining one-half of such taxes be not paid on or before the thirtieth day of November, then such remaining one-half shall be delinquent, and interest at the rate of *twelve per cent per annum* shall be charged thereon from the first day of June preceding until paid: Provided further, there shall be an allowance of *three per cent rebate* to all payers of taxes who shall pay the *taxes on real property* in one payment and in full *on or before the fifteenth day of March* next prior to the date of delinquency. All rebates allowed under this section shall be charged to the county current expense fund and all collections from penalties and interest on delinquent taxes shall be credited to the current expense fund." (Sec. 1, Laws of Washington, 1917, p. 582.)

A recent construction and application of this section was made in the following case:

Northern Pacific R. Co. v. Franklin County,
118 Wash. 117.

Section 2 of the same act, so far as is pertinent, is as follows:

“ On the first business day *after the expiration* of the eleven months after the taxes charged against any *real property are delinquent*, the board of county commissioners shall determine whether it will be for the best interest of the county to carry or further carry the delinquent taxes upon the books of the county or to permit certificates of delinquency for the same to be sold to any person, and should it be deemed advisable to permit the sale of certificates of delinquency they shall pass a resolution to that effect and publish a copy of the same in the next issue of the official newspaper of the county and on the first day of the month next following, the treasurer shall have the right, and it shall be his duty, upon demand and payment of the taxes and interest, to make out and issue a certificate or certificates of delinquency against such property and such certificate or certificates shall be numbered : Provided further, that all certificates of delinquency sold to persons shall be registered by the county treasurer in a book provided for that purpose, in which shall also be recorded the name and address of the purchaser of each certificate of delinquency. Thereafter, at any time before *the expiration of three years from the original date of delinquency* of any tax included in a certificate of delinquency issued to a person, the owner of the property may pay to the county treasurer the amount of taxes due for one or more subsequent years, with delinquent interest, if any, to the date of payment, and if the same shall have been paid by the holder of the certificate of delinquency the county treasurer shall forward the amount of payment or payments made

by such owner to the holder of the certificate of delinquency at his registered address. The payment of taxes for such subsequent year or years shall thereby extend the time of the foreclosure of the particular certificate of delinquency one year for each subsequent year's taxes so paid." (Remington's Compiled Statutes of Washington, 1922, Sec. 11290.)

Section 11292 of Remington's Compiled Statutes of Washington, 1922, is as follows:

"Any time after the expiration of three years from the original date of delinquency of any tax included in a certificate of delinquency, the holder of any certificate of delinquency may give notice to the owner of the property described in such certificate that he will apply to the superior court of the county in which such property is situated, for a judgment foreclosing the lien against the property mentioned herein."

Section 11258, Remington & Ballinger's Compiled Statutes, 1922.

"On the first Monday in February succeeding the levy of taxes, the county treasurer shall proceed to collect all personal property taxes. He shall give notice by mail to all persons charged with personal property taxes, and if such taxes are not paid on or before the fifteenth day of March of such year, he shall forthwith proceed to collect the same. In the event that he is unable to collect the same in due course, he shall prepare papers in distraint, which shall contain a description of the personal

property, the amount of the tax, the amount of accrued interest at the rate of fifteen per cent per annum from March 15th, and the name of the owner or reputed owner, and shall file the same with the county sheriff, who shall immediately without demand or notice distrain sufficient goods and chattels belonging to the person charged with such taxes to pay the same with interest at the rate of fifteen (15) per cent per annum from the fifteenth day of March of such year, together with all accruing costs, and shall immediately proceed to advertise the same by posting written notices in three public places in the county in which such property has been levied upon, one of which places shall be at the county courthouse, such notices to state the time when and the place where such property will be sold. If the taxes for which such property is distrained and the interest and cost accruing thereon are not paid before the date appointed for such sale, which shall not be less than ten (10) days after the taking of such property, such sheriff shall proceed to sell such property at public auction, or so much thereof as shall be sufficient to pay such taxes with interest and costs, and shall pay to the treasurer the money so collected at such sale, and if there be any overplus of money arising from the sale of any personal property, the treasurer shall immediately pay such overplus to the owner of the property so sold, or to his legal representative. . . ."

Constitution of Washington, Article I, section 12, declares:

"No law shall be passed granting to any citizen, class of citizens or corporation, other than municipi-

pal, privileges or immunities which upon the same terms shall not equally belong to all citizens or corporations."

Malin v. Benthien, 114 Wash. 533, 539.

State v. Robinson Co., 84 Wash. 246.

In re Camp, 38 Wash. 393.

Article VII, section 2, Constitution of Washington, declares:

"The legislature shall provide by law a uniform and equal rate of assessment and taxation on all property in the state according to its value in money, and shall prescribe such regulation by general law as shall secure a just valuation for taxation of all property, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property."

Section 3 of the same article provides:

"The legislature shall provide by general law for the assessing and levying of taxes on all corporation property as near as may be by the same methods as are provided for the assessing and levying of taxes on individual property."

This court has expressed its opinion as to the meaning of that language.

Johnson v. Wells Fargo Company, 239 U. S. 234, 237, 238, 242.

The language of this court in that case was as follows:

"The constitution of the State of South Dakota, as the same was in force at the time of these assessments, provided (Article XI, Sec. 2), as follows:

" 'All taxes to be raised in this state shall be uniform on all real and personal property, according to its value in money, to be ascertained by such rules of appraisement and assessment as may be prescribed by the legislature by general law, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property. And the legislature shall provide by general law for the assessing and levying of taxes on all corporation property, as near as may be, by the same methods as are provided for assessing and levying of taxes on individual property.'

"From an analysis of this section, it appears that taxes to be valid must be uniform upon all real and personal property; that the legislation providing for the assessment and collection of taxes must be such that every person and corporation may be taxed in proportion to the value of his, her or its property; and that the general laws which provide for the assessing of taxes on corporation property, shall be as near as may be, by the same methods as are provided for the assessing and levying of taxes on individual property

"The stringent provisions of the constitution of South Dakota, then in force, required the adoption of a rule of valuation, as near as might be, of like character in assessing individual and corporate property in the state, and here, the record shows, the valuation of the property of the express com-

panies was based principally upon their gross incomes, determined by the method already described. Such administration of the statute would be illegal, although the law upon its face be unobjectionable. *Reagan v. Farmer's Loan & Trust Co.*, 154 U. S. 362, 390."

To say that the owners of two pieces of real estate owned in fee are given equal protection of the laws when the property of one is so assessed that by paying the tax thereon by *March 15* he receives a discount of three per cent, or if not so paid he is extended credit upon one-half until *June* and the other one-half until *December*, with the right in case of delinquency to pay twelve per cent interest instead of fifteen per cent interest, and with the further *right for more than three years to redeem from such delinquency*, while the other is *denied* all of those rights and his real estate made subject to sale on *ten days' notice* without any *right of redemption*, is to state a proposition which carries its own refutation. The courts have so decided as the following quotations demonstrate:

"Defendant contends that chapter 64 is unconstitutional because it provides that certain taxes assessed thereunder must all be paid *on or before March 30*, while all other taxes, even certain taxes assessed under this same law, can be paid *one-half on April first* and the other one-half on or before *October thirty-first*. This provision requiring pay-

ment on an earlier date is *one which from its nature can only result in inequality*—the use of money being a thing of value. There is a fundamental difference between laws under which lack of uniformity and equality may arise owing to defects in human judgment and laws which absolutely contravene the provisions of the constitution by themselves creating a lack of uniformity and equality. The mere fact that such lack of uniformity or equality may be slight can not be considered in support of *a law so inherently bad. . . .*

“We are, therefore, of the opinion that those provisions of chapter 64 providing for fixing the rate of levy upon defendant’s property, providing for the division among the local taxing districts of certain of the taxes collected from defendant’s property *and providing for a time for payment of its taxes other than that fixed for the payment of other taxes, are all unconstitutional.*”

Ewert v. Taylor, 38 So. Dak. 124, 160 N. W. 797, 804, 807.

“Laws, 1913, c. 367, relating to the taxation of mineral rights is unconstitutional as violating the guaranties of the state and federal constitutions as to *equal protection of the laws*, by putting the special class of *real estate by itself* and for public revenue purposes treating it and the owners thereof *materially different than other forms of real estate and owners thereof are treated.*” (Syllabus.)

State ex rel. Owen, Attorney General v. Donald, Secretary of State, 161 Wis. 188, 153 N. W. 238.

In the opinion in the case last above cited, the court said:

"Does the quoted legislative enactment violate the guaranties of *equal protection of the laws* contained in the state and *federal constitution* by putting the particular species of real estate in a *class by itself* and treating the same for public revenue purposes and the owners thereof materially different than *other forms of real estate* and the owners thereof are treated? Though the constitutionality of the act in question was challenged by defendant on several grounds, only those covered by the stated question were considered in deciding the case. It is the opinion of the court, the chief justice, and Justices Siebecker and Kerwin dissenting, that the classification made by such act can not be justified under even the very liberal rules on that subject and, hence, the question must be answered in the affirmative, requiring the defendant's motion to quash the writ of mandamus, upon the ground that *such act is unconstitutional*, to be granted."

In the concurring opinion of Mr. Justice Timlin, he said:

"I do not rest this case solely on the question of the validity of the statute under section 1, article VIII, Wisconsin constitution. I also consider its validity under the fourteenth amendment to the paramount federal constitution:

"(a) Because it has been customary in this court to consider these constitutional requirements together.

“(b) Because if it conflicts with the paramount constitution it must fall, notwithstanding it might be thought capable of enforcement under our state constitution.

“(c) It might be well to rest it wholly on the federal constitution. I would have been willing to so rest it and say nothing about the state constitution out of deference to the minority opinion and to facilitate the review of the decision in the Supreme Court of the United States by those hereafter claiming title under this statute. The arbitrary imposition of unequal burdens upon persons between whom no substantial distinction germane to the purposes and objects of the law can be made, is forbidden by the state and *federal constitutions* in matters of taxation, as well as in other matters. . . . It having been decided by this court that the requirement that the rule of taxation be uniform is not limited to the mere rate of taxation, *I think it follows that the statute in question transgresses this requirement as well as the Fourteenth Amendment to the United States Constitution.* ‘The rule of taxation’ does not, I think extend to all steps in enforcing collection of the tax, but it does extend to those important steps which are essential parts of the tax proceedings. Collection by demand or collection by enforcement process are such and it would be intolerable, for illustration, that *a certain favored class* should have *six months* in which to pay their taxes *while others* must pay in *six days*.

“(b) This statute, I think, also aims to cut off at the sale the *right of redemption* of the owner of the

kind of property discriminated against, while leaving a three year's right of redemption to all other owners of other estates in the same tract of land. True, the redemption must be made upon penalty, paying fifteen per cent interest, but he would be a bold innovator in the law who would hold that the equity of redemption is not a matter of great consequence. Besides this, he would be much at variance with facts and would ignore the ordinary practices prevailing in real life. But, just as there was no legal foundation for classification or discrimination in the clause which deprived the owners of the ores and minerals of the advantage of competitive bidding, so there is no legal foundation for this discrimination against him with reference to the time or manner of redemption. In this latter respect the act is void under both the state and federal constitutions.

“(c) I consider the act invalid, also, in that it attempts to confer upon a stranger to the title of the ores and minerals the privilege of redemption or acquisition which it denies to the delinquent owner. This is a clear case of denying the equal protection of the law. It would be the legal equivalent of enacting that one tenant in common might acquire title to the whole under a tax sale, while the other tenant in common could not.”

“Under the constitution which requires taxes to be levied and collected under general laws, the legislature has no power to impose a pecuniary penalty for nonpayment upon one class of taxpayers exclusively, leaving all other classes exempt from any penalty whatever. Nor can the legislature subject

one class of taxpayers to execution for taxes on the first of October, when the great mass of taxpayers are exempt until the 20th of December." (Syllabus by court.)

Atlanta & F. R. R. Co. v. Wright, 87 Ga. 487.

In the opinion the court said:

"We think the trial judge erred in holding that the second ground of the affidavit of illegality presented no defense to the execution. The same paragraph of the Constiution above quoted declares the taxes shall be levied and collected under general laws. We think that this means that the laws for the levying and collecting of taxes shall be substantially the same for all classes of property; that if a pecuniary penalty is put upon delinquent taxpayers it shall affect all alike; that the legislature can not impose one penalty upon a railroad company for its failure to pay taxes upon its property and another penalty upon an individual for his failure to pay taxes upon his property. If any pecuniary penalty for failure to pay taxes upon property is exacted there must be such a penalty upon all taxpayers who fail to pay. The general law requires that each and every taxpayer shall pay his taxes by the 20th of December in each year and in case of default it is made the duty of the tax collector to issue execution. (Acts, 1885, p. 66.) The general law, therefore, being that taxes shall be paid by the 20th of December, and if not paid that an execution shall issue upon that day, the legislature had no power to prescribe for railroad companies exclusively a different day of payment and a different day for the issuance

of the execution and a penalty not imposed upon other classes of taxpayers."

"By section 21 the first day of July is made the day of delinquency as to taxes on all other kinds of property. The *constitutional* objection suggested is that an *unreasonable discrimination* is made in favor of the holders of shares of stock in corporations by giving to these persons *until the first of September*. We think this objection is well taken."

Malone v. Williams, 118 Tenn. 390, 103 S. W. 798, 807.

In the case at bar the equal protection of the laws was therefore denied to the plaintiffs by an arbitrary selection of them and their real estate for hostile discrimination.

"The equal protection of the laws is a pledge of the protection of equal laws."

Yick Wo v. Hopkins, 118 U. S. 356, 369.

"The inhibition of the amendment that no state shall deprive any person within its jurisdiction of the equal protection of the laws was designed to prevent any person or *class of persons* from being singled out as a special subject for discriminating and hostile legislation."

Pembina Mining Company v. Pennsylvania,
125 U. S. 181, 188.

"Arbitrary selection can never be justified by *calling* it classification. The equal protection de-

manded by the Fourteenth Amendment forbids this."

Gulf, Colorado & Santa Fe Railroad v. Ellis,
165 U. S. 150, 159.

"It is apparent that the *mere fact* of classification is not sufficient to relieve a statute from the reach of the *equality clause* of the Fourteenth Amendment and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and *is not a mere arbitrary selection.*"

Gulf, Colorado & Santa Fe Railroad v. Ellis,
165 U. S. 150, 165.

"While reasonable classification is permitted without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the things in respect to which such classification is imposed and classification can not be arbitrarily made without any substantial basis. Arbitrary selection, it has been said, can not be justified by calling it classification."

Southern Railway Company v. Greene, 216
U. S. 400, 417.

Greene v. Louisville & Interurban R. Co.,
244 U. S. 499, 516, 518.

Taylor v. Louisville & N. R. Co., 88 Fed.
350, 364, 365.

"The guaranty was aimed at undue favor and individual or class privilege on the one hand and at hostile discrimination or the oppression of inequality on the other. *It sought an equality of treatment of all persons even though all enjoyed the protection of due process.*"

Truax v. Corrigan, 257 U. S. 312.

Sioux City Bridge Company v. Dakota County, 260 U. S. —; Ad. Op. 67 L. Ed. 220.

"In *csaes* brought to this court from state courts for review on the ground that a federal right set up in the state court has been wrongly denied and in which the state court has put its decision on a finding that the asserted *federal right* has no basis in point of fact or has been waived or lost, this court, as an incident of its power to determine whether a federal right has been wrongly denied, may go behind the finding to see whether it is *without substantial support*. If the rule *were otherwise* it almost always would be within the power of a state court *practically* to prevent a review here."

Truax v. Corrigan, 257 U. S. 312.

"In view of these decisions and the grounds upon which they proceed, it is clear that in a case like the present, where the issue is whether a state statute in its application to facts which are set out in detail. . . . , violates the *Federal Constitution*, *this court must analyze the facts as averred and draw its own inferences* as to their ultimate effect, and is

not bound by the conclusion of the state supreme court in this regard."

Truax v. Corrigan, 257 U. S. 312.

Ward v. Love County, 253 U. S. 17, 22.

Terre Haute, etc., R. Co. v. Indiana, 194 U. S. 579, 589.

Union Pacific v. Public Service Comm., 248 U. S. 67, 69.

"The Constitution deals with substance, not shadows. Its inhibition was levelled at the thing, not the name. . . . If the inhibition can be evaded by the form of the enactment, its insertion in the fundamental law was a vain and futile proceeding."

Cummings v. State of Missouri, 4 Wall. 277, 325.

Shaffer v. Carter, 252 U. S. 37, 55.

"In making the assessment upon the property in question, upon the *use* to which it was being put, the assessor proceeded upon a fundamentally wrong basis."

Samish Gun Club v. Skagit County, 118 Wash. 578, 580.

"No authority has been called to our attention which holds that property itself may be so classified that it shall bear a burden greater than that of other property of like value within the same assessment jurisdiction. If, then, the exactions from estates required by this statute amount to property taxes, we think the statute can not be upheld."

State ex rel. Nettleton v. Case, 39 Wash. 177, 181.

"There is neither uniformity nor equality where all kinds of property save one are, intentionally and in pursuance of a fixed and definite policy, assessed at less than forty per cent of its full and fair value, whilst that class of property is intentionally assessed at sixty per cent of such value. The facts pleaded do not show an erroneous valuation or a difference in judgment as to a correct measure of value, *but rather an intentional and arbitrary discrimination against a particular class of property.* Such an *arbitrary policy* is *vicious* in principle, *violative of the constitution* and operates as a constructive fraud upon the rights of the property holder discriminated against."

Spokane & Eastern Trust Company v. Spokane County, 70 Wash. 48, 52.

Raymond v. Traction Co., 207 U. S. 20, 37.

Sioux City Bridge Co. v. Dakota County, 260 U. S. —, Law Ed. 67, Ad. Op. p. 220.

"Class legislation discriminating against some and favoring others is prohibited."

Barbier v. Connolly, 113 U. S. 27, 32.

Truax v. Raich, 239 U. S. 33.

Atchison, Topeka & Santa Fe Railroad Company v. Vosburg, 238 U. S. 56.

Connolly v. Union Sewer Pipe Co., 184 U. S. 540.

Cotting v. Kansas City Stock Yards Co., 183 U. S. 79.

Missouri v. Lewis, 101 U. S. 22.

Magoun v. Illinois Trust & Savings Bank,
170 U. S. 283.

To assess two pieces of property of the same kind, such as real estate owned in fee and of equal value, in such manner that though the tax on both be paid on the same day, the owner of one piece may extinguish the tax by paying three per cent less than the owner of the other, simply because of the use to which the property is put, is just as invidious a method of assessment as one assessing one piece three per cent more than the other because of such use.

“The protection of property implies the protection of its value.”

Ames v. Union Pacific Railroad Company,
64 Fed. 165, 177.

To take from one piece of property some of its value by the method of assessing it, while allowing another piece of property of exactly the same kind and value to suffer no such forced appropriation, is not only to deny the equal protection of the laws to the property and its owner discriminated against, but also to deprive such owner of property without due process of law.

“The classification must be reasonable, not arbitrary, and must rest upon some ground of differ-

ence having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. . . . Nevertheless, a discriminatory tax law can not be sustained against the complaint of a party aggrieved if the classification appear to be altogether illusory."

Royster Guano Co. v. Virginia, 253 U. S. 412, 415.

Pennsylvania Coal Co. v. Mahon, 260 U. S. —, Ad. Op. 67, L. Ed. 154.

SPECIFICATION OF ERROR II

The Act of 1907 as amended by the Act of 1911, as construed and enforced, violates the Fourteenth Amendment:

1. It denies the plaintiffs the equal protection of the laws.

The tax commissioner singled out from all of the operating street railroad property in the state a certain portion of plaintiffs' property, real and personal, and attempted to impose upon it a lien for taxes by assessing it before the report of the company, which he was required to consider in making the assessment, was filed, and before it was required to be filed, and at an earlier date than any other similar property in that year or in any year prior thereto or since, had been or was assessed.

This was done because the contract of purchase and sale between the city and the company was to be consummated before the first of April, 1919, and if no assessment should be made until after the first of April, 1919, as in the case of all other similar property, this property would not then be subject to assessment or taxation because owned by a municipal corporation prior to assessment.

The letter of the state tax commissioner to the attorney general of the state hereinbefore quoted, and the testimony of the state tax commissioner also hereinbefore quoted, demonstrate the correctness of this statement.

It thus appears that the property of the plaintiffs and the plaintiffs were singled out from all other similar property and the owners of such property throughout the state of Washington, for the sole reason that plaintiffs had entered into and were about to consummate a contract which the supreme court of the state had upheld as valid, and were subjected to hostile and discriminatory taxation to which neither any similar property nor the owners of such property were subjected.

The language of this court, when the contention was made that the action of the American Sugar

Company had made the enactment of a special statute necessary, is applicable to this case:

"The answer shows that the plaintiff is the only one to whom the act could apply and that the statute was passed in view of plaintiff's conduct to meet it. It is upon the assumption of the latter fact that the argument is pressed that the plaintiff has no standing in equity since it made the legislation necessary. If the connection were admitted *it would be so much the worse for the constitutionality of the act.*"

McFarland v. American Sugar Co., 241 U. S. 79, 85.

In *Detroit, Grand Haven & Milwaukee Railway Company v. Fuller*, 205 Fed. 86, 89, the court said:

"The first ground upon which Act No. 95 is attacked by the complainants is that it constitutes class legislation, so-called, in contravention of the Fourteenth Amendment to the Federal Constitution.

"Act No. 95, in seeking to impose a tax only upon the stock, bonds and other evidences of indebtedness of specially chartered railway companies, is in the opinion of the court *an arbitrary singling out* of the Detroit, Grand Haven & Milwaukee Railway Company stockholders, bondholders and other creditors. No real and substantial distinction upon which to base a classification for the purpose of taxation exists between the stockholders, bondholders and other creditors of that company and the stockholders, bondholders and other creditors of other Michigan railway companies. The court is, therefore, of

the opinion that Act No. 95, *in thus singling out* the stockholders, bondholders and other creditors of the Detroit, Grand Haven & Milwaukee Railway Company for the purpose of the *tax thereby imposed*, does constitute *class legislation in contravention of the Fourteenth Amendment*, and that said act and taxes assessed thereunder are thereby rendered *void* and of no effect. See *N. P. R. Co. v. Walker*, (C. C.) 47 Fed. 681; *Railway v. Taylor*, (C. C.) 86 Fed. 168; *Railroad Company v. Pennsylvania*, 134 U. S. 232, 10 Sup. Ct. 533, 33 L. Ed. 892; *Railway v. Ellis*, 165 U. S. 150, 17 Sup. Ct. 255, 41 L. Ed. 666; *Cotting v. Stockyards Company*, 183 U. S. 79, 22 Sup. Ct. 30, 46 L. Ed. 92; *Railway Co. v. Greene*, 216 U. S. 400, 30 Sup. Ct. 287, 54 L. Ed. 536, 17 Ann. Cas. 1247."

"A statute would not be constitutional which should select particular individuals from a class or locality and subject them to *peculiar rules* or impose upon them *special obligations or burdens* from which *others in the same class or locality are exempt*. Everyone has a right to demand that he be governed by *general rules* and a special statute which without his consent *singles his case out* as one to be regulated by a different law from that which is applied in all similar cases, would not be *legitimate legislation*, but would be such an *arbitrary mandate* as is *not within the province of free government*."

Cooley Constitutional Limitations, 391.

State v. Julow, (quoting Cooley), 129 Mo. 163.

If in the case at bar an act of the legislature had singled out the plaintiffs and their property by name and description because they had entered into a contract for the purchase and sale of their property and subjected them and their property to the imposition of a tax lien before the time otherwise fixed by law, and for special and invidious treatment, no one would contend that such enactment did not violate the Fourteenth Amendment. When, therefore, the state officials construed the statute so as to make it apply to the plaintiffs and their property and to it and them only, and enforced it only as to it and them such construction and enforcement brought the statute within the prohibition of the Fourteenth Amendment as effectually as if such construction were written in the statute.

McFarland v. American Sugar Co., 241 U. S. 79, 85.

Yick Wo v. Hopkins, 118 U. S. 356, 373.

Detroit, Grand Haven & Milwaukee Railway Co. v. Fuller, 205 Fed. 86, 89.

FURTHER DISCRIMINATION

Construction of Railroad Law of 1907 with Telegraph Law of 1907 as Parts of One Law

On the 6th of March, 1907, Laws of Washington, 1907, pages 132, 140, the railroad act before mentioned was approved. For the convenience of the court the act is set out in full in the appendix to this brief, together with the telegraph act enacted at the same session and the Act of 1911 amending the railroad act of 1907. The following are quotations from the railroad act, which we place before the court for the purpose of comparing them with the telegraph act and for the purpose of demonstrating that the railroad act as amended by the Law of 1911, and as construed and enforced by the state officials, denied the plaintiffs the equal protection of the laws in contravention of the Fourteenth Amendment:

"Section 1. That the State Board of Tax Commissioners shall make an annual assessment of the operating property of all railroad companies within this state, for the purpose of levying and collecting taxes as hereinafter provided. . . .

"Section 2.

"(6) The word 'railroad' or words 'railroad company,' wherever they occur in this act, shall be

considered, for all purposes of assessment and taxation, as including every kind of street railway, suburban railroad, or interurban railroad, person, firm, association, company or corporation, whether its line of railroad be maintained either at the surface, or above or below the surface of the earth, or by whatever power its vehicles are transported. . . .

"Section 5. Every railroad company, operating in this state, shall, between the first day of January and the *first day of April* in each year, under the oath of the president or other chief officer, and the secretary, treasurer, auditor or superintendent, of such company, make and file with the board, in such form as the board may prescribe, reports containing the following facts:

"(13) Such general description of the *real property* of the railroad company, owned or operated in the State of Washington, as would be sufficient in a conveyance thereof, under a *judicial decree directing a sale for taxes*, to vest in the grantee all title and interest in and to said property.

"(14) A like description of the *personal property*, including moneys and credits, held by the company as a whole system and also the part thereof apportioned to the system in this state. . . .

"(18) The entire gross earnings of such company in the State of Washington, for each and every month, for each calendar year, ending on the 31st day of December. . . .

"(20) Such other facts and information as said board may require, in the form of returns prescribed by it. *Blanks* for making the *above reports*

shall be furnished to *such companies by said board* except for the copies of the reports required under the provisions of subdivision nineteen of this section. *In case any company refuses or neglects to make the reports provided for by this act, or refuses or neglects to furnish any information requested, the board shall inform itself the best it may on the matters necessary to be known, in order to discharge its duties with respect to the valuation and assessment of the property of such company.*

“Section 6. If any railroad company or its officers or agents, shall refuse or neglect to make any reports required by this act, or said board, or shall refuse or neglect to permit an inspection and examination of its records, books, accounts or papers when requested by said board, or shall refuse or neglect to appear before the board in obedience to a summons, such company shall be estopped to question or impeach the action or determinations of the board upon any grounds not affecting the substantial justice of the tax.

“Section 7. The board, on or before the first day of March and the first day of June, in each year, according to their best knowledge and judgment, shall ascertain and determine the true cash value of the property of each railroad company within this state. Every such company shall be entitled on its own motion, to a hearing and to present evidence before such board, at any time *between the first day of April and the first day of May*, relating to the value of the property of such company, or to the value of the general property in the state. On request in writing for such hearing or presentation,

the board shall appoint a time and place therefor, within the period aforesaid, the same to be conducted in such manner as the board shall direct. Such hearing shall not impair or affect the right to a further hearing before the State Board of Equalization, as hereinafter provided. The value of property of railroads for assessment shall be made as of the same time, and in like manner, as the value of the general property of the state, is ascertained and determined.

"Section 8. The board shall prepare assessment rolls and place thereon, after the name of each railroad company assessed, the *general description* of the property of such railroad, which shall include its *real estate*, right-of-way, tracks, stations, terminals, appurtenances, rolling stock, equipment, franchises and all other real and personal property of said company, which shall be deemed and held to include *the entire property* and franchises of such railroad company *within the state*, and all title and interest therein. For the purpose of determining the true cash value of the property of each company, *the board may*, if deemed necessary, view and inspect the property of such company, and *shall consider the reports filed in compliance with this act*, and the reports and returns of the company filed in the office of any officer of this state, *and such other evidence* or information as may have been taken or obtained bearing upon the value of the property of the railroad company assessed. In case of railroad companies which own or operate railroads lying partly within and partly without the state, the said board shall only value

and assess the property within this state. In determining the value of the portion within the state, the board shall take into consideration the value of the entire system, the mileage of the whole system, and of the part within this state, together with such other information, facts and circumstances as will enable the board to make a substantially just and correct determination. When the value of the property of the railroad company within this state shall have been ascertained and determined, the amount thereof shall be entered upon said assessment rolls, opposite the name of the company, *and shall be and constitute the value of the entire property of such railroad company within this state*, for the levy of taxes thereon, subject to revision and correction by the State Board of Equalization as hereinafter provided. Upon the completion of such assessment, the board shall give notice by mail to each railroad company assessed, of the amounts of its assessment as entered upon such rolls. . . .

“Section 12. In making the assessments of the operating property of railroads, and in the apportionment of the values and the taxation thereof, as hereinbefore provided, *all land occupied and claimed exclusively as the right-of-way for railroads, with all the tracks, and substructures and superstructures which support the same, together with all side tracks, second tracks, turn-outs, station houses, depots, round-houses, machine shops, or other buildings belonging to the road, used in the operation thereof, without separating the same into land and improvements, shall be assessed and taxed as real property.* And the rolling stock and other movable

property belonging to any railroad company or corporation shall be considered personal property and shall be assessed and taxed as such."

On the 12th of March, 1907, Laws of Washington, 1907, pages 243, 252, there was approved an act entitled:

"An act to provide for the assessment of the property of telegraph companies."

Section 5 is as follows:

"Every company operating a telegraph line or lines, in this state, shall annually between the first day of January and the *first day of April* in each year, under the oath of the president or other chief officer and the secretary, treasurer, auditor or superintendent of such company, make and file with the board in such form as said board may prescribe, reports containing the following facts: (The statement required is substantially the same as that required of railroad companies.)

"(13) Such general description of the real estate of the company owned or operated in Washington as would be sufficient in a conveyance thereof, under a judicial decree, directing a sale for taxes to vest in the grantee all title and interest in and to the said property.

"(14) A like description of the personal property, including moneys and credits held by the company as a whole system and the part thereof apportioned to the line in Washington. . . .

“(23) Any company, association or corporation owning all or a majority of the capital stock of the company operating in this state or having practical control of any such company may be required to make report of such facts and information specified in this section as may be deemed necessary by the board to a correct valuation and assessment of the property of such operating company. *In case any company refuses or neglects to make the reports required by this act, or refuses or neglects to furnish any information requested, the board shall inform itself the best it may on the matters necessary to be known in order to discharge its duties with respect to the valuation and assessment of the property of such company.*

“Section 8. The board on or between the *first day of April* and the first day of July in each year, according to their best knowledge and judgment, shall ascertain and determine the true cash value of the property of each company within the state. For the purpose of determining the true cash value of the property of each company, appearing on the assessment roll, the board may, if deemed necessary, view and inspect the property of such company and shall consider the reports filed in compliance with this act.”

It will be seen from the foregoing quotations from the two acts that railroads and street railroads under the railroad act and telegraph companies under the telegraph act were granted the right to file the reports setting out the description of their property

and giving the details required by section 5 of each act, at any time prior to the *first day of April* in each year. Under each act the penalty for failing or refusing to file such report by the first day of April was that the board might,

“Inform itself the best it may on the matters necessary to be known in order to discharge its duties with respect to the valuation and assessment of the property of such company.”

In each case it was provided that for the purpose of determining the true cash value of the property of each company the board,

“Shall consider the reports filed in compliance with this act and the reports and returns of the company filed in the office of any officer of this state and such other information as may have been taken or obtained bearing upon the value of the property assessed.”

Section 7 of the railroad act reads as follows:

“The board on or before the first day of March and the first day of June, in each year according to their best knowledge and judgment, shall ascertain and determine the true cash value of the property of each railroad company within this state. Every such company shall be entitled on its own motion to a hearing and to present evidence before such board at any time between the first day of April and the first day of May relating to the value of the property of such company or to the value of the general property in the state. . . .”

Section 8 of the telegraph act reads as follows:

"The board on or between the *first day of April* and the first day of July, in each year, according to their best knowledge and judgment, shall ascertain and determine the true cash value of the property of each company within the state. . . ."

It will thus be seen from the foregoing quotations that while railroad companies, including street railroad companies, are given the right to file their reports at any time prior to the first day of *April* and that the board was required to consider such reports, and it was only in the event that the companies failed or refused to file such reports that the board had the right to inform itself the best it might on the matters necessary to be known in order to make an assessment of the property, and that telegraph companies were given the same rights at the same times and the same consequences were attached to their failure to file such reports, the taxing officials of the state and the supreme court of the state, by reason of the ambiguity contained in section 7 of the railroad act, denied all of the rights conferred upon the railroads and street railroads under the other sections of that act which were the same as the rights specifically preserved by section 8 of the telegraph act by providing for the assess-

ment of telegraph property on or between the *first day of April* and the first day of July in each year.

"If there is doubt as to the meaning of a statute such as this under consideration, the construction must be strict and the doubt must be resolved in favor of the citizen upon whom the burden is sought to be imposed. *Treat v. White*, 181 U. S. 264."

Rockefeller v. O'Brien, 224 Fed. 541.

Schwab v. Doyle, 258 U. S. 529.

The two acts relating to the assessment and taxation of the property of railroads, including street railroads, and telegraph companies having been passed at the same session and within a week of each other, must be considered together as though they were parts of one act. The effect of the construction of the railroad act by the state officials and the enforcement of that act as so construed resulted in the privileges and immunities granted to all other property and to the owners of such other property, including telegraph companies, being denied to street railroad companies and operating street railroad property. This construction and enforcement of the act violate the Fourteenth Amendment to the Constitution of the United States.

In *Royster Guano Co. v. Virginia*, 253 U. S. 412, heretofore cited, this court had before it the ques-

tion whether one of two statutes of Virginia providing for the taxation of the income of Virginia corporations violated the Fourteenth Amendment to the Constitution of the United States, and said:

"The statute thus assailed imposes an income tax of one per centum upon the aggregate amount of income upon each person or corporation,' subject to specified deductions and exemptions, including in income from "all profits from earnings of any partnership or business done in or out of Virginia,' and also 'all other gains and profits derived from any source whatever.' Under this act as applied to plaintiff in error by the state officers, whose action was sustained by the court of last resort, a tax was imposed upon the income derived from its plants without the state as well as from that within the state. At the same time, chapter 495, Laws, 1916 (p. 830), approved on the same day was in force. . . .

"It is not disputed that under this act corporations created by and existing under the laws of Virginia and doing business in other states, but none within the state except the holding of stockholders' meetings, are exempted from the payment of any income tax. Of course, these two statutes—c. 472 and c. 495—must be considered together as parts of one and the same law, and by their combined effect, if the judgment under review be affirmed, plaintiff in error would be required to pay a tax upon its income derived from business done without as well as from that done within the state, while other corporations owing existence to the same laws and

simultaneously deriving income from business done without the state but none from business within it, are exempt from taxation. It is unnecessary to say that the 'equal protection of the laws' required by the Fourteenth Amendment does not prevent the states from resorting to classification for the purposes of legislation. . . . But the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. . . . *Nevertheless, a discriminatory tax law can not be sustained against the complaint of a party aggrieved if the classification appear to be altogether illusory.* . . . It is obvious that the ground of difference upon which the discrimination is rested has no fair or substantial relation to the proper object sought to be accomplished by the legislation. It follows that it is arbitrary in effect and none the less because it is probable that the unequal operation of the taxing system was due to inadvertence rather than design. . . . We are *constrained to hold* that so far as c. 472 of the laws of 1916 operated to impose upon plaintiff in error a tax upon income derived from business transacted and property located without the state, *because of the mere circumstance that it also derived income from business transacted and property located within the state*, while at the same time under c. 495 other corporations deriving their existence and powers from the laws of the same state and receiving income from business transacted and property located without the state, but none from

sources within the state, *were exempted from income taxes*, there was an *arbitrary discrimination amounting to a denial to plaintiff in error of the equal protection of the laws within the meaning of the Fourteenth Amendment.*"

This case was cited and approved in *Kansas City Southern Railway Company v. Road Improvement District No. 6*, 256 U. S. 658, 661, where this court said:

"Obviously, the railroad companies have not been treated like individual owners and we think the discrimination so palpable and arbitrary as to amount to a denial of the equal protection of the law. . . . Classification, of course, is permissible, but we can find no adequate reason for what has been attempted in the present case. *Royster Guano Co. v. Virginia*, 253 U. S. 412, 415."

In the case at bar, not only were the plaintiffs and their property singled out and treated differently from all other owners of street railroad operating property, but, although required by the Act of 1907 to be treated in respect to their real estate exactly as railroad companies were treated, they were by the discriminating Act of 1911 deprived of all of the privileges and immunities incident to the ownership of real estate enjoyed by railroad companies, by corporations generally and by individuals,

and subjected to burdens not imposed upon similar property when owned by other corporations and by individuals.

That such discrimination constituted arbitrary selection forbidden by the Fourteenth Amendment clearly appears from the decisions of this court hereinbefore cited.

2. The plaintiffs were denied due process of law by the construction and enforcement of the Act of 1907 as amended by the Act of 1911, and if such enforcement should be further permitted they would be further deprived of their property without due process of law.

If the assessment attempted to be made by the tax commissioner on the 15th of March, 1919, more than two weeks before the company was required to file its report with the tax commissioner, which attempted assessment was made without notice and without hearing, imposed a final lien upon the property, and the only relief thereafter obtainable by the plaintiffs would be a reduction in the value of the property, the plaintiffs were by the statute denied due process of law.

Central of Georgia Railway Company v. Wright, 207 U. S. 127.

Turner v. Wade, 254 U. S. 64.

Coe v. Armour Fertilizing Works, 237 U. S. 413, 425.

Northern Pacific Railroad Co. v. Garland, 5 Mont. 146.

SPECIFICATION OF ERRORS III AND IV

The attempted assessment without jurisdiction and the blending of real estate owned in fee with personal property and the assessment of both classes of property as personal property and in a lump sum, violated the Fourteenth Amendment to the Constitution of the United States:

“An assessment when taxes are to be levied upon a valuation, is obviously indispensable. It is required as the first step in the proceedings against individuals subject to taxation and is the foundation of all which follow it. Without an assessment they have no support and are nullities.”

Cooley on Taxation, 3rd Ed., p. 597.

People v. Weaver, 100 U. S. 539.

“The assessor has no right or jurisdiction to make the list until the taxpayer or person having property subject to taxation has neglected or refused to make it.”

Northern Pacific Railroad Company v. Garland, 5 Mont. 146.

“The assessor in order to make a valid assessment of railroad property must, as in other cases, substantially follow the terms of the statute. By the allegations of the complaint the assessor, before

listing and assessing the property in question, made no requisition upon the secretary or clerk of the plaintiff for a list of its property under oath or otherwise, but without notice to plaintiff and upon his own motion, and knowledge of its value, made the list and assessment upon 'twenty miles of railroad and rolling stock' at \$200,000. If any regard at all is to be had for the statute providing for the assessment of railroads, certainly this assessment is no assessment and wholly invalid."

Northern Pacific Railroad Company v. Garland, 5 Mont. 146.

"By virtue of sections 1013 and 1015 of the statute, the list and return of the assessor shall contain a separate and distinct description and valuation of the real and personal property. These two sections taken together require the separate listing and separate valuation of the personal and real property and forbid that the real and personal property be lumped together and assessed in a mass. The reasons for these provisions of the statute are obvious. Unless the real and personal property are separately and distinctly described and valued, it would be impossible for the Board of Equalization to properly equalize the taxes. If rolling stock is to be taken as personal property, then in this assessment of 'twenty miles of railroad and rolling stock' there was an unwarranted lumping together and valuation of real and personal property. It is the right of the taxpayer that his personal and real property be separately listed and valued and he has the right to be heard before the proper tribunal as to the cor-

rectness or propriety of such list and valuation. His right so to be heard and to notice of the proceedings is a constitutional right (Cooley Tax'n, 266), and his right to list his property for taxation or notice thereof is of the same nature. The assessment and levy of taxes is the exercise of sovereign power. It is taking private property for public uses—a necessary power in every well regulated government—but its exercise must be limited and controlled by law and this law must be substantially observed in order to confer jurisdiction upon the person administering it. No person is required or can be compelled to pay taxes which have not been assessed and levied in pursuance of law."

Northern Pacific Railroad Company v. Garland, 5 Mont. 146.

County of San Mateo v. Southern Pacific Railroad Company, 13 Fed. Rep. 722.

San Francisco & N. R. Co. v. Dinwiddie, 13 Fed. Rep. 789.

County of Santa Clara v. Southern Pacific Railroad Company, 18 Fed. Rep. 385.

Santa Clara County v. Southern Pacific Railroad, 118 U. S. 394.

San Bernardino County v. Southern Pacific Railroad Company, 118 U. S. 417.

California v. Pacific Railroad Company, 127 U. S. 1.

We respectfully ask the court to refer to and consider the brief filed upon the merits, so that the facts of the case upon which the federal questions

are based will be fully before the court in considering the motion to dismiss on the ground that no federal question is involved.

IV

"The decision rests upon independent grounds not involving a federal question and broad enough to maintain the judgment."

Under this head it is claimed that because in previous years certain property of the company had been assessed as operating property and the company had acquiesced in such assessment, such conduct furnishes a justification for singling out the property involved in this case from all other property in the state of Washington, similar and dissimilar in kind, and placing a lien upon it at a date earlier than that placed upon any similar property and subjecting it to an arbitrary and invidious method of assessment and taxation applied to no other owner of property nor to any similar property in the state. The state tax commissioner testified (R. 85) that the case at bar presented the first case where an assessment was made at the date when it is claimed the assessment involved was made. It plainly appears from the testimony of the state tax commissioner (R. pp. 75-92), and from

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his letter to the attorney general of the state (R. 161-163), that the Act of 1911, as construed and applied to the plaintiffs in error and their property arbitrarily singled out the plaintiffs in error and their property and subjected them and it to invidious and arbitrary statutory and administrative action, depriving them of their property without due process of law and denying them the equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States.

It is stated in the brief of defendants in error that the plaintiffs in error denied the validity of the unit method of assessment. The statement is incorrect. The assessment in the case at bar was not an assessment by the unit method. It was one where the taxing officials absolutely disregarded the unit method in order to impose an arbitrary assessment upon a portion of the unit before the time fixed by law. Such method of assessment was adopted, not because title to the property had passed from the company to the city, but because it was to pass from the company to the city under a contract which had been held valid by the supreme court of the state. If the sale to the city had not been consummated no one would have contended

that the assessment had been made in accordance with the statute. If the plaintiffs in error and their property had had applied to them and their property the rule applied to all other owners of similar property and to similar property, there would have been neither an assessment made nor a tax levied.

V

“Review in this case is by certiorari if a federal question is involved.”

The writ of error is the proper method of review in this case, because the Supreme Court of the State of Washington upheld the validity of the act of February 21, 1911, amending the act of March 6, 1907, of the state of Washington relating to the assessment of the operating property of railroads, against the claim of appellants that such act deprived the plaintiffs in error of their property without due process of law and denied them the equal protection of the laws in contravention of the Fourteenth Amendment to the Constitution of the United States.

Chicago, R. I. & Pacific Railway Co. v. Perry, 66 U. S. Supreme Court Advance Opinions, 635.

Meidreich v. Laurenstein, 232 U. S. 236.

North Carolina Railroad Co. v. Zachary, 232 U. S. 248, 257.

Royster Guano Co. v. Virginia, 253 U. S. 412.

Pennsylvania Coal Company v. Mahon, 260 U. S. 393.

Kansas City Southern Ry. v. Road Improvement District 6, 256 U. S. 658-660.

Merchants National Bank v. Richmond, 256 U. S. 635, 637.

The case being one properly brought to this court by writ of error because the state supreme court sustained the act of 1911 as valid against the claim of appellants that it was unconstitutional and void under the Fourteenth Amendment to the Constitution of the United States, appellants are at liberty to assign as error the invidious and discriminatory administration of the law as construed and administered by the officials of the state, although the review of error in administering the law would otherwise properly have been by *certiorari*.

Prudential Insurance Company v. Cheek, 66 U. S. Supreme Court Advance Opinions, 626, 259 U. S. —.

We submit that the motions of defendants in error should be denied.

Respectfully submitted,

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No. 653.

Supreme Court of the United States

OCTOBER TERM, 1922.

PUGET SOUND POWER & LIGHT COMPANY and
THE CITY OF SEATTLE, *Plaintiffs in Error,*

VS.

THE COUNTY OF KING, FRANK W. HULL, as
Assessor of King County; NORMAN M. WAR-
DALL, as Auditor of King County, and WM. A.
GAINES, as Treasurer of King County,
Defendants in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE
OF WASHINGTON.

**MOTION OF DEFENDANTS IN ERROR TO
DISMISS OR AFFIRM ON THE RECORD**

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Supreme Court of the United States

OCTOBER TERM, 1922.

PUGET SOUND POWER & LIGHT COMPANY and THE CITY OF SEATTLE,
Plaintiffs in Error,

VS.

THE COUNTY OF KING, FRANK W. HULL, as Assessor of King County; NORMAN M. WARDALL, as Auditor of King County, and WM. A. GAINES, as Treasurer of King County,
Defendants in Error.

No. 653.

IN ERROR TO THE SUPREME COURT OF THE STATE
OF WASHINGTON.

MOTION OF DEFENDANTS IN ERROR TO
DISMISS OR AFFIRM ON THE RECORD.

Come now defendants in error, by their attorneys undersigned, and move this Honorable Court to dismiss each of the two writs of error granted herein to the Supreme Court of the State of Washington or to affirm the decision of the State Court on the record and for the following reasons:

1. Each of the writs of error herein was issued more than ninety days after the final de-

cision in the cause by the highest court in the state.

2. If there is a federal question involved, it has not been properly raised in the lower courts.

3. No federal question is involved.

4. The decision rests on independent grounds not involving a federal question and broad enough to maintain the judgment.

STATEMENT OF THE CASE.

This is an action to enjoin the collection of taxes in the principal sum of \$401,017.76, levied against the operating property of the Company's street railroad system in the City of Seattle for the year 1919. The trial court held the tax to be valid and dismissed the action. On appeal, the Washington Supreme Court, Department No. 2, affirmed the trial court. A petition for rehearing and hearing *en banc* was granted and on re-argument the departmental opinion was affirmed, in 117 Wash. 351; Tr. p. 176. The decision (Tr. p. 167) gives a statement of the case sufficient to present the matters raised by this motion.

ARGUMENT.

I.

PLAINTIFF IN ERROR, THE CITY OF SEATTLE, ON THE RECORD HAS URGED NO FEDERAL QUESTION.

Inspection of the record discloses that plaintiff in error, The City of Seattle, suggested no federal question. To obviate this difficulty, the Company petitioned for and was granted a separate writ of error herein. The writ of error in which the City and the Company appear as plaintiffs in error should be dismissed.

The City declined to join with the Company in petitioning for a writ of error. Notice of sever-

ance was given and a separate writ was issued with the Company as plaintiff in error (Tr. p. 181).

After its declination, the City joined with the Company in a petition for a writ of error (Tr. p. 177), which was also granted (Tr. p. 180). We submit that this latter should be dismissed.

Sully v. Am. National Bank, 178 U. S. 289, 44 L. Ed. 1072.

II.

THE WRITS OF ERROR WERE NOT FILED WITHIN THE NINETY DAYS LIMITED BY SECTION 1003 REVISED STATUTES.

The Washington Supreme Court rendered its *en banc* decision on the petition for re-hearing on June 12, 1922. The two writs of error herein were not filed until September 22, 1922, a period of one hundred and two days later.

Plaintiffs in Error claim that time does not run from the entry of the final decision of the court, but from the entry of an order by the Clerk on July 10, 1922. The local law respecting the determinations of the State Supreme Court is found in the Constitution and Statutes and is set forth in the Appendix.

The finality of these decisions is shown by reference to the Constitution and Statutes.

Plaintiffs in Error seek to avoid the final force of the decision by reliance upon an order entered

by the clerk, a certified copy of which forms the remittitur or mandate to the lower court. This order was entered July 10, 1922 (Tr. p. 176). The remittitur was sent down July 12, 1922, and was not recalled (Tr. p. 176).

The remittitur is the *process* issued out of the court, based on its *final decision*. The order entered by the clerk, of which the remittitur is a certified copy, is denominated by the statute a "judgment," but in its essence, it is the formal issuance of process upon the final decision.

There is a very great difference between the memorandum decision of a trial judge and the decision of the State Supreme Court. The former has no statutory basis, no finality and no binding force. The latter has all these qualities. It is the last *judicial* act of the Appellate Court. The rest is *ministerial* and in aid of process, and conforms to the rules of this court, 24 (§§ 4 and 5) and 39, and to the rules in general of the Circuit Court of Appeals relating to mandates. The question raised, therefore, is a constitutional one.

Under the State Constitution (Art. IV, § 2) a majority of the court "shall be necessary to form a quorum and pronounce a decision."

When that decision is pronounced and becomes *final*, neither the Constitution, Statute, nor Rules of the court authorize the Chief Justice, or any Judge, or the Clerk to *suspend its finality* or to prepare, sign and enter any judgment, order or

decree based upon it which is of any binding force and effect, except of course, writs and process in accordance with the final decision.

The finality and binding force of a decision and its character as a judgment was recognized by the court in

State ex rel. Vanderveer v. Gormley, 53 Wash. 543, 102 Pac. 435,

wherein these constitutional provisions were construed.

Under our Constitution, the court does not file an opinion to be followed by a judgment. It is required to pronounce a decision, given in writing with the ground therefor by a majority of the court.

A judgment is "final," which disposes of the whole case on the merits, directs what judgment shall be entered and leaves nothing to the discretion of the trial court.

Rio Grande Western R. Co. v. Stringham, 239 U. S. 44, 60 L. Ed. 136.

Where a final judgment is affirmed on appeal in all its parts, and the case is not remanded to the lower court for further proceedings, the controversy is at an end, and rights of the parties as far as involved in the litigation are conclusively adjudicated, further proceedings in the case both in the appellate and lower courts are precluded, and the judgment of the lower court is

in full force and effect precisely the same as though no appeal had been taken.

4 C. J. 1148;

See:

Sections 7322-7325-7326 Rem. 1915 Code.

The precise point involved has never been determined as affecting the finality of decisions in this state, and particularly decisions of affirmance.

We submit that under the local law when a judgment or decree is affirmed on appeal, by the court *en banc* upon re-hearing, that its *decision* finally disposes of the merits of the case and leaves nothing to be done by the court, or any judge thereof, or by the clerk of a *judicial* nature. The clerk is to tax costs—a ministerial function—the schedule being fixed by statute (Rem. 1915 Code, § 1744). That statute recognizes the power of the court disallowing for cause certain of the statutory costs. No such order was made and the clerk entered the statutory costs and sent the remittitur down to the trial court. His delay in this case of nearly thirty days in taxing costs and issuing the remittitur could in no wise suspend the finality of the court's decision.

III.

NO FEDERAL QUESTION IS INVOLVED.

Plaintiffs in Error contend that the Company's *operating street railroad property* in Seattle

could not be assessed as a *unit*, but that its operating real estate must be assessed as real estate, and its operating personalty as personalty. This is not the law. The question is no longer debatable.

State R. R. Tax Cases, 92 U. S. 575, 23 L. Ed. 663;

Pittsburgh C. C. & St. L. R. Co. v. Backus, 154 U. S. 421, 38 L. Ed. 1031;

Cleveland, C. C. & St. L. R. Co. v. Backus, 154 U. S. 439, 38 L. Ed. 1041;

Pac. Express Co. v. Seibert, 142 U. S. 339, 35 L. Ed. 1035;

Mich. Cent. R. Co. v. Powers, 201 U. S. 459, 50 L. Ed. 744;

N. P. Ry. Co. v. State, 84 Wash. 510, 147 Pac. 45;

Bell's Gap R. R. Co. v. Penn., 134 U. S. 232, 33 L. Ed. 892;

Minot v. Phila. etc. R. Co., 18 Wall. 206, 21 L. Ed. 888;

Columbus Southern R. Co. v. Wright, 151 U. S. 470, 38 L. Ed. 238;

Kidd v. Alabama, 188 U. S. 730, 47 L. Ed. 669;

W. U. Tel. Co. v. Indiana, 165 U. S. 304, 41 L. Ed. 725;

Merch. & Mfgs.' Nat'l. Bank v. Penn., 167 U. S. 461, 42 L. Ed. 236;

Am. Sugar Refining Co. v. La., 179 U. S. 89, 45 L. Ed. 102;

N. Y. ex rel. N. Y. Clearing House Bldg. Co. v. Barker, 179 U. S. 279, 45 L. Ed. 190;

Commonwealth v. Walsh's Trustee, 117 S. W. 398;

Board of Com'rs. v. Johnson, 89 N. E. 590;

Missouri, K. & T. Ry. Co. v. Miami County Com'rs., 73 Pac. 103.

Classification of street railroad operating property for purposes of taxation does not violate the Fourteenth Amendment.

Savannah etc. R. Co. v. Mayor etc. of Savannah, 198 U. S. 392, 49 L. Ed. 1097;

People ex rel. Metro. St. R. Co. v. Bd. of Tax. Com'rs., 199 U. S. 1, 50 L. Ed. 65;

Detroit Citizens' St. R. Co. v. Common Council, 125 Mich. 673, 85 N. W. 96;

Chicago etc. R. Co. v. State, 108 N. W. 557.

Statutory designation as to what shall constitute personal property and what real estate for purposes of taxation is a legislative question.

Bell's Gap R. Co. v. Penn., 134 U. S. 232, 33 L. Ed. 892;

Am. Sugar Ref. Co. v. La., 179 U. S. 89, 45 L. Ed. 102;

Missouri, K. & T. Ry. Co. v. Miami Co. Com'rs., 73 Pac. 103;

Bellingham Bay Imp. Co. v. New Whatcom, 20 Wash. 53;

Moeller v. Gormley, 44 Wash. 465;
Metropolitan Bldg. Co. v. King County,
 62 Wash. 409;
N. P. R. Co. v. State, 84 Wash. 510;
Nathan v. Spokane Co., 35 Wash. 26;
State ex rel. Board of Com'rs. v. Clausen,
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Johnson, Collector v. Roberts, 102 Ill. 655;
Central Iowa Ry. Co. v. Board of Super-
visors, 25 N. W. 128;
Missouri, K. & T. Ry. Co. v. Board of
Com'rs. of Labette Co., 59 Pac. 383.

Nor is there any distinction between the state's power to provide different methods for the collection of taxes, and its power to classify property for taxation purposes.

Bloxham v. Consumers' Elec. Light & St.
R. Co., 29 L. R. A. 507;
Johnson, Collector v. Roberts, 102 Ill. 655.

A decision of the state court resting upon the construction and not upon the validity of a statute of the state does not present a federal question.

Grand Gulf R. Co. v. Marshall, 12 How.
 164, 13 L. Ed. 938;
Ferry v. King Co., 141 U. S. 668, 35 L.
 Ed. 895;
Snell v. Chicago, 152 U. S. 191, 38 L. Ed.
 408.

It follows from this rule that the decision of

the state court holding that the provisions of the statute relating to the Company's "report" were directory and not mandatory is binding here and presents no federal question (Tr. p. 174).

The procedure or plan of administering the law adopted by the Commissioner did not violate the Fourteenth Amendment. Counsel suggest that because for reasons of official convenience it had been the practice of the Tax Commissioner to withhold announcement of railroad assessments until a certain date, that no statutory power existed to make an earlier assessment. Neither reason nor authority supports this view. If practice became a rule of statute there would be as many "practice statutes" on a given subject-matter as there are officials to administer such law, and they would be superceded by new ones at recurring elections.

As the court below said in its opinion (Tr. p. 176):

"Nor does the procedure or plan of administering the law that was adopted by the commissioner in making the assessment in this case in any way violate the Fourteenth Amendment to the federal constitution or any guaranty contained in the state constitution. The procedure in no way affected the substantial justice of the tax itself, nor did it vitiate or in any manner affect the assessment. *Coolidge v. Pierce County, supra.*

The doctrine, and cases referred to, in *Chicago N. W. R. Co. v. State*, *supra*, clearly applicable to the present case, meet all such contentions of the appellants."

Under the local law, as construed by the state court, the validity of the tax is in no wise affected by any valid method adopted or discretion exercised by the assessing officer so long as the result is substantial justice of the tax itself.

Puget Sound Agr. Co. v. Pierce Co., 1 Wash. Ter. 159;

Eureka District Gold Mining Co. v. Ferry Co., 28 Wash. 250;

Doty Lbr. & Shingle Co. v. Lewis Co., 60 Wash. 428;

Phillips v. Thurston Co., 35 Wash. 187;

Smith v. Newell, 32 Wash. 369.

The court below construed the local law. Every essential of due process of law exists here—a taxing statute, a tax for public purposes, jurisdiction over subject-matter and parties, property subject to taxation, an assessment within the time and in the manner prescribed by law, hearing, review upon notice before the State Board of Equalization and a hearing in court. We most earnestly insist that the tax is valid and violates no provision of the federal constitution.

IV.

THE DECISION RESTS UPON INDEPENDENT
GROUNDS NOT INVOLVING A FEDERAL QUESTION
AND BROAD ENOUGH TO MAINTAIN THE JUDG-
MENT.

The rule is settled that in such cases, no re-
view can be had.

Ward v. Love Co., 253 U. S. 17, 64 L. Ed.
751;

Farson, Son & Co. v. Bird, 248 U. S. 268,
63 L. Ed. 233;

Garr, S. & Co. v. Shannon, 223 U. S. 468,
56 L. Ed. 510;

Petrie v. Nampa & M. Irrig. Dist., 248 U.
S. 154, 63 L. Ed. 178.

By its own course of conduct the company has estopped itself to urge the denial of any rights under the Fourteenth Amendment. Its operating street railroad property has been assessed under the law since 1907 without question. Indeed so salutary has the law been from the Company's standpoint that it entered into a "*gentlemen's agreement*" providing for the assessment by the State Tax Commission, or Commissioner, *as personal property*, of *all of its non-operating* properties in King County, real and personal. These properties included its water power plants outside the city for generating electric energy for light and power purposes, the transmission lines and

the steam heating plant in Seattle (Tr. pp. 80-82).

In 1918 the Company's valuation was fixed by the Tax Commissioner at \$16,686,000.00. This included the power plants and other *non-operating* properties, under the "*gentlemen's agreement*."

In 1919 the Tax Commissioner excluded the power plants and other *non-operating* properties and fixed a valuation of \$12,000,000.00 for the operating street railway system as sold to the City, first deducting for certain *non-operating* real estate included in the inventory of the sale and which had always been assessed by the County Assessor and in 1918 was valued by him at \$60,150.00, assessed valuation (Tr. pp. 93, 166). This \$60,150.00, assessed value, represents, \$120,300.00 actual value. This, plus \$12,000,000.00, equals \$12,120,300.00 valuation of property sold for \$15,000,000.00.

The opinion recognizes this fact, the court saying (Tr. p. 174):

"That the statute providing for the assessment of the operating property, both real and personal, *in solido* does not violate the constitutional provision referred to is well sustained by the doctrine of *N. P. R. Co. v. State*, 84 Wash. 510, 147 Pac. 45. In fact the undisputed testimony in this case shows that this manner of assessment was specifically requested all prior years after and including

1914 by the tax agent of the traction company upon the score, as stated by him, that it saved work in his office."

V.

REVIEW IN THIS CASE IS BY CERTIORARI IF A
FEDERAL QUESTION IS INVOLVED.

Counsel claimed in the court below and the claim is renewed in their brief here, pp. 24-43, that plaintiffs in error are denied certain privileges and immunities guaranteed by the Fourteenth Amendment. Our point is that the privileges and immunities protected by the first paragraph of the Fourteenth Amendment relate to federal, not state citizenship, and must be raised by *certiorari* under § 237 of the Judicial Code.

Slaughter House Cases, 16 Wall. 36, 21 L.

Ed. 394;

Re Kemmler, 136 U. S. 436, 34 L. Ed. 519;

Rosenthal v. New York, 226 U. S. 260, 57

L. Ed. 212.

CONCLUSION.

We respectfully submit that the motion to dismiss or affirm upon the record should be granted.

MALCOLM DOUGLAS,

HOWARD A. HANSON,

Counsel for Defendants in Error.

APPENDIX.

The Constitution provides (Art. IV, §§ 2 and 4):

“§2. The supreme court shall consist of five judges, a majority of whom shall be necessary to form a quorum and *pronounce a decision*. The said court shall always be open for the transaction of business except on non-judicial days. In the determination of causes, *all decisions of the court shall be given in writing, and the grounds of the decision shall be stated * * **” (Italics ours.)

“§4. The supreme court shall have original jurisdiction in *habeas corpus* and *quo warranto* and *mandamus* as to all state officers, and appellate jurisdiction in all actions and proceedings, excepting that its appellate jurisdiction shall not extend to civil actions at law for the recovery of money or personal property when the original amount in controversy or the value of the property does not exceed the sum of two hundred dollars, unless the action involves the legality of a tax, impost, assessment, toll, municipal fine, or the validity of a statute. The supreme court shall also have power to issue writs of *mandamus*, review, prohibition, *habeas corpus*, *certiorari*, and all other writs necessary and proper to the complete exercise of

*its appellate and revisory jurisdiction * * **

(Italics ours.)

The material statutory provisions are set forth in Rem. 1915 Code, as follows:

“§ 8. There shall be two departments of the supreme court, denominated respectively department one and department two. The chief justice shall assign four of the associate judges to each department and such assignment may be changed by him from time to time: Provided, that the associate judges shall be competent to sit in either department and may interchange with one another by agreement among themselves, or if no such agreement be made, as ordered by the chief justice. The chief justice may sit in either department and shall preside when so sitting, but the judges assigned to each department shall select one of their number as presiding judge. Each of the departments shall have the power to hear and determine causes, and all questions arising therein, subject to the provisions in relation to the court *en banc*. The presence of three judges shall be necessary to transact any business in either of the departments, except such as may be done at chambers, but one or more of the judges may from time to time adjourn to the same effect as if all were present, and a concurrence of three judges shall be neces-

sary to pronounce a decision in each department: Provided, that if three do not concur, the cause shall be reheard in the same department or transmitted to the other department, or to the court *en banc*."

See, also:

"§ 10. The decision of a department, except in cases otherwise ordered as hereinafter provided, *shall not become final until thirty days*, after the filing thereof, during which period a petition for rehearing, or for a hearing *en banc*, may be filed, the filing of either of which, except as hereinafter otherwise provided, *shall have the effect of suspending such decision* until the same shall have been disposed of. If no such petition be filed the decision of a department *shall become final* thirty days from the date of its filing, unless during such thirty-day period an order for a hearing *en banc* shall have been made: Provided, that if for any cause the chief justice or a majority of the department rendering any decision shall be of the opinion that such decision *should go into effect* prior to thirty days after its filing, it shall go into effect, *and a judgment issue thereon*, any time after its filing and prior to such thirty-day period, upon being in writing approved by the chief justice and any two associate judges who took no part in rendering such

decision. The effect of granting a petition for a rehearing, or of ordering a cause once decided by department to be heard *en banc*, shall be *to vacate and set aside the decision*. Whenever a decision shall become final, as herein provided, a judgment shall issue thereon." (Italics ours.)

"§ 11. The chief justice, or any four judges, may convene the court *en banc* at any time, and the chief justice shall be the presiding judge of the court when so convened. The presence of five judges shall be necessary to transact any business, and a concurrence of five judges present at the argument shall be necessary *to pronounce a decision in the court en banc*: Provided, that if five of the judges so present do not concur in a decision, then reargument shall be ordered and all the judges qualified to sit in the cause shall hear the argument, but to *render a decision* a concurrence of five judges shall be necessary; and *every decision of the court en banc shall be final except* in cases in which no previous decision has been rendered in one of the departments, and in such cases the decision of the court *en banc shall become final thirty days* after its filing, unless during such period a petition for rehearing be filed. The filing of such petition within such period shall have the effect of *sus-*

pending the decision until disposed of by the concurrence of five judges: Provided, that if for any cause five judges shall be of the opinion that such decision *should go into effect* prior to thirty days after its filing, it shall go into effect any time after its filing and prior to such thirty-day period upon being in writing approved by six judges of such court. Whenever a decision *shall become final* as herein provided, a judgment shall issue thereon." (Italics ours.)

"§ 14. The judgments and decrees of the supreme court shall be final and conclusive upon all the parties properly before the court."

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No. 653, October Term, 1922

No. 138, October Term, 1923

IN THE

Supreme Court of the United States

PUGET SOUND POWER & LIGHT COMPANY (formerly named Puget Sound Traction, Light & Power Company), and THE CITY OF SEATTLE,

Plaintiffs in Error

vs.

THE COUNTY OF KING, FRANK W. HULL, as Assessor of King County, NORMAN M. WARDALL, as Auditor of King County, and WILLIAM A. GAINES, as Treasurer of King County,

Defendants in Error

*Writ of Error to the Supreme Court
of the State of Washington*

REPLY BRIEF OF PLAINTIFFS IN ERROR

(Italics in this brief are counsels' unless otherwise stated)

Instead of dealing with each proposition advanced in the brief of defendants in error we will state the propositions which we believe are controlling and necessarily require the reversal of the decree of the Supreme Court of the State of Washington in this case.

I.

The tax in controversy is not an occupation, license or privilege tax, but is a tax upon property imposed by a general law of the state upon all taxable property according to value.

Spokane & Eastern Trust Co. vs. Spokane County, 70 Wash. 48, 52;

State ex rel. Nettleton vs. Case, 39 Wash. 177, 179, 180, 181;

Magoun vs. Illinois Trust & S. Bank, 170 U. S. 283;

Dawson vs. Kentucky Distilleries Co., 255 U. S. 288, 294.

Uniformity and equality are therefore necessary where all property is required to be taxed at the same rate on the same value.

Cases dealing with occupation, franchise or privilege taxes are not applicable.

Savannah, Thunderbolt Ry. vs. Savannah, 198 U. S. 392, is an example. The tax there was on business.

II.

The act of 1907 as amended by the act of 1911, while subjecting the operating property of railroads, including street railroads, to exactly the same method of assessment so far as valuation is concerned, classified operating railroad real estate as real estate and operating street railroad real estate as personal property.

The tax levied upon the value of each was at the same rate if each retained its character as real estate but classifying one as real estate and the other as personal property when both were real estate produced the same result as if a different rate were levied on property of the same kind and value.

III.

While the general tax on real estate and personal property may be paid on or before March 15 in the year following its levy, the general tax law under which the tax was imposed makes the following discrimination between real estate and personal property:

1. If both taxes levied under the same law at the same rate upon property of the same value be paid on March 15, the owner of real estate may satisfy the tax upon his real estate in full by paying 97% of the tax. The owner of personal property paying the tax on the same day must pay 100% of the tax in order to extinguish it.

2. If the taxes should not be paid March 15 in the year following the levy, the owner of personal property becomes a delinquent taxpayer. The personal property taxed is subject to an interest penalty at the rate of 15% per annum and the property may be sold without any proceeding in court on ten days' notice and without any right of redemp-

tion. A portion of the real estate of the owner of such personal property may be selected and charged with the personal property tax. If he sells to the state or to a municipal corporation after the personal property has been assessed but prior to the levy of a tax upon such an assessment, he sells subject to such future tax and he and the state or municipal corporation must pay the tax on the property or other property selected becomes liable for the tax.

3. If the owner of real estate does not pay the tax on real estate on the 15th day of March by paying 97% of the tax in full satisfaction, his tax does not become delinquent. He may prevent delinquency by paying 50% of the tax without interest at any time before June 1 and 50% before December 1. If the tax on his real estate should become delinquent he may pay it with interest at the rate of 12% per annum at any time within three years after delinquency and prior to the entry of a decree of court foreclosing the tax lien, which decree cannot be entered until the expiration of three years after delinquency.

Section 11252, Remington's Comp. Stat. 1922;

Opening Brief of Plaintiffs in Error, pages 24-28b.

If the owner of real estate after its assessment, but before the levy of a tax upon such assessment, should sell his real estate to the state or to any municipal corporation, it would no longer be the subject of taxation. The real estate sold could not be taxed. The seller could not become a delinquent taxpayer in respect to such property, nor could any tax not levied prior to the sale be charged against either the property sold or any other property which the vendor might own.

Section 11252, Remington's Comp. Stat. of Washington 1922;

State vs. Snohomish County, 71 Wash. 320.

In the case at bar, real estate owned in fee by the company conveyed to the city by the same deed which conveyed other real estate in the same city block, was so treated that some was assessed as personal property because constituting a part of the operating street railroad property sold to the city, while other lots, because not considered by the tax commissioner to be operating street railroad property, were not assessed by him and as title passed to the city before the levy of a tax thereon were marked exempt by the local assessor. (R. 140, 164.)

IV.

The question in this case is whether, when the legislature of a state has enacted such a general tax law as in the State of Washington pursuant to constitutional provisions requiring "a uniform and equal rate of assessment and taxation on all property in the state according to its value in money, and shall prescribe such regulations by general law as shall secure a just valuation for taxation of all property, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property," and "shall provide by general law for the assessing and levying of taxes on all corporation property as near as may be by the same methods as are provided for the assessing and levying of taxes on individual property," and that "no law shall be passed granting to any citizen or class of citizens or corporations other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens or corporations," a special law which deprives real estate owned in fee and its owners, because such real estate is used in connection with the operation of street railroads, of rights, privileges and immunities granted to such real estate and its owners by the general tax law equally

with other real estate not so used and its owners, violated the Fourteenth Amendment by denying to the former the equal protection of the laws when the rights, privileges and immunities of which the former are deprived are by the special law preserved to other real estate and its owners subjected also to such special law in all respects, except as to such deprivation?

The general tax law by its terms operates equally upon real estate used in street railroad operation and upon that not so used. There is no discrimination under the general tax law between the former and its owners and the latter and its owners. The law of 1907 prior to the amendment of 1911, made no discriminations in such respect. It is the law of 1911 which provides that those owning real estate in fee and thereafter using it in street railroad operation, although it was previously classified for taxation as real estate and taxed as real estate, should thereafter be denied equality with other real estate and its owners, both under the special law and under the general law.

V.

At page 41 of their brief defendants, after quoting from *Missouri K. & T. Railway vs. Miami Company*, 73 Pacific 103, 105, the following language:

"The legislature may make any kind of property personalty for the purpose of taxation, although it be real estate by the common law, and for all other purposes,"

say:

"That such classification of property for purposes of taxation does not violate any provision of the federal constitution is settled law in this court."

Defendants fail to recognize the distinction which this court has always made between what constitutes "*classification*" and what constitutes "*arbitrary selection*." The proposition which defendants must establish in this case in order to sustain the tax is that "*classification*" includes "*arbitrary selection*." The decisions of this court cited by defendants are cases of "*classification*." The case before the court is one of "*arbitrary selection*." Defendants have suggested no reason when two pieces of real estate of equal value, subject to a property tax imposed by the same general tax law upon all property of the same kind according to value and at the same rate, the legislature may by special law declare that one piece of property is real estate, which it is, and, therefore, entitled to the 97% rate imposed on real estate, and that the other piece, which is also real estate, is personal property and is not real estate and, therefore, its owner

must pay the personal property tax of 100%, why such action is not "arbitrary selection." The only attempt which defendants have made to justify such "arbitrary selection" is that the selection was made by statute and that the Supreme Court of the state has sustained the statute and held that the statute does not violate the Fourteenth Amendment. Such construction of the Fourteenth Amendment destroys it. To cite decisions of this court upholding "classification" as defined by this court, and apply such decisions to a state of facts which this court has condemned as constituting "arbitrary selection," is a plain misapplication of decisions resulting from confusion of thought.

"Arbitrary selection, it has been said, cannot be justified by calling it classification."

Southern Railway Co. vs. Greene, 216 U. S. 400, 417.

"But the classification must be reasonable, *not arbitrary*, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike * * *. Nevertheless, a discriminatory tax law cannot be sustained against the complaint of a party aggrieved if the classification appear to be *altogether illusory*."

Royster Guano Co. vs. Virginia, 253 U. S. 412, 415;

Gulf, Colorado & S. F. Ry. vs. Ellis, 165 U. S. 150, 155, 156, 157, 159;

Kentucky Finance Corporation vs. Paramount Auto Exch. Corporation, Law Ed. Ad. Op. July 2, 1923, p. 745.

That defendants labor under such confusion of thought plainly appears from their attempt to construe the decision in *Royster Guano Co. vs. Virginia*, 253 U. S. 412, so as to make it inapplicable to the case at bar. They say at page 57 of their brief:

"In that case, one statute imposed an income tax on persons and corporations, under which a tax had been levied upon income from the company's plants without the state as well as from within the state. Another statute exempted from income or *ad valorem* taxes Virginia corporations doing no business within the state except the holding of stockholders' meetings. Both these laws related to corporations organized under the laws of Virginia. On one class an income tax was imposed; the other was exempt. This the court very properly held was a denial of the equal protection of the laws. But that situation does not exist in the case at bar. Here, under our laws, all individual and corporate property is subject to taxation."

If a state, having power to declare what shall be taxable subjects and what exempt, cannot by the same law or by laws considered as one, tax a cor-

poration created by the laws of the state upon the income of such corporation received from within and without the state, because it exempts other corporations of the same state receiving income from without the state but none from sources within the state, because such discrimination "rested on no fair and substantial relation to the proper object sought to be accomplished by the legislation" and "was an arbitrary discrimination amounting to a denial to the plaintiffs in error of the equal protection of the laws within the meaning of the Fourteenth Amendment," how is it possible where a general tax law gives the owners of all real estate certain rights and immunities in respect to the payment of property taxes thereon to hold that a special law applying to the assessment and taxation of two such owners can preserve to the one and deny to the other the rights and immunities which the general law gives to both equally, does not violate the Fourteenth Amendment?

When tracts of real estate owned in fee constituting a part of the operating property of railroads and tracts of real estate owned in fee constituting a part of the operating property of street railroads are both valued by the same official under the same law in exactly the same manner for years, so that

the owners of both receive equality of treatment under the general tax law of the state and under the special law, how can such special law be amended by making no change in respect to the valuation or anything affecting the valuation, but depriving street railroad real estate of equality with railroad real estate conferred upon them equally by the general law in respect to payment, the time of payment and the consequences of nonpayment of taxes upon real estate owned in fee, and escape the condemnation which this court pronounced in the *Royster* case, when it said:

“It is obvious that the ground of difference upon which the discrimination is rested has no fair or substantial relation to the proper object sought to be accomplished by the legislation. It follows that *it is arbitrary in effect* and, none the less, because it is probable that the unequal operation of the taxing system was due to inadvertence rather than design * * *. We are constrained to hold that so far as c472 of the laws of 1916 operated to impose upon plaintiff in error a tax upon income derived from business transacted from property located without the state, because of the mere circumstance that it also derived income from business transacted from property located within the state, while at the same time under c495 other corporations deriving their existence and powers from the laws of the same state and receiving income from business transacted and property located without the

state, but none from sources within the state, were exempted from income taxes, there was an *arbitrary discrimination* amounting to a *denial* to plaintiff in error of the equal protection of the laws within the meaning of the Fourteenth Amendment" (416).

On what fair and substantial relation to the proper object of a tax law can such discrimination between railroad and street railroad real estate owned in fee be rested when they are valued in the same manner and subjected on the face of the same general law to the same general tax on value?

If electric cars and motors which are used in street railroad operation are housed in a car barn located upon real estate owned in fee by a street railroad company, and in a roundhouse or car barn located upon real estate owned in fee by a steam railroad company engines or motors are housed which are used in steam railroad operation, why should the street railroad car barn site be personal property and the railroad roundhouse or car barn site be real estate and respectively subject to the discrimination created by the general tax law between real estate and personal property? No reason has been suggested. We submit none can be suggested.

VI.

The denial to plaintiffs of the equal protection

of the laws in respect to the discrimination against their real estate was not limited to equality with railroads, with some other corporations and with individuals. They were specifically denied equality with telegraph companies in that although they were first given until the same date to file their reports with the same effect, and were subjected to the same penalty for failure to file as telegraph companies, the statute as construed by the Supreme Court of the state and as applied to the plaintiffs, denied them the exemption from assessment before the first day of April preserved to telegraph companies by the express language of the statute.

Although the Supreme Court of the state construed the railroad statute as giving the company until the first of April to file its report, it also construed the statute as giving the tax commissioner, without such report having been filed *and before the expiration of the time for filing it had expired*, the right to impress the property of the company with a permanent lien *for taxes levied thereafter*, so that on a sale to a municipality prior to April 1st the property would be impressed with a tax not then levied. Under section 8 of the telegraph statute no assessment could be made of telegraph property until the first day of April, because

that is the earliest date the tax commissioner is authorized under that statute to begin valuation. What is the result? If a telegraph company should on March 31 convey to a municipal corporation any of its real estate or personal property used or employed in the operation of the company or the conduct of its business, such property would not thereafter be subject to *assessment or taxation*, and no other property of the company could be selected and charged with any tax attempted to be levied after that date upon the property conveyed, for the property conveyed prior to the first day of April *would not be the subject of taxation*.

At page 56 of their brief, defendants say:

"The method prescribed by local law for taxation of telephone and telegraph property has no bearing upon the case."

At page 57, defendants, commenting on the case of *Royster Guano Co. vs. Virginia*, 253 U. S. 412, say:

"On one class an income tax was imposed; the other was exempt. This the court very properly held was a denial of the equal protection of the laws."

If two statutes relating to taxation and taking effect on the same day, one imposing a tax on cor-

poration income if derived from sources both within and without the state creating such corporation, and the other exempting from taxation corporation income derived from without the state when no income was derived from sources within the state, are to be construed as one, and a corporation deriving income from sources from within and without the state and taxed thereon is denied, in violation of the Fourteenth Amendment, the equal protection of the law exempting corporations not receiving income from within the state, from a tax on income received without the state, how can it be said that the construction of the railroad statute so as to allow a lien to be imposed *before the first of April for taxes to be subsequently levied on street railroad property*, so that street railroad property conveyed to a municipal corporation *before the first of April will be subject to taxes subsequently levied during that year*, while telegraph property conveyed on the same day to the same grantee will be exempt from the same tax for the same year levied at the same future date, does not deny to street railroad property, its owner, and the grantee of such owner, the equal protection of the laws in violation of the Fourteenth Amendment?

The railroad act of 1907 and the telegraph act

of 1907 were passed at the *same session* of the legislature. As neither contained an emergency provision they both took effect on the *same day*—ninety days after the adjournment of the legislature. Both acts related to the same subject, namely, taxation. Both were administered by the same official. Both were related to the general tax law of the state. They must, therefore, be construed as *one act*.

Royster Guano Co. vs. Virginia, 253 U. S. 412;
State ex rel. Malloney vs. Spike, 19 Wash. 652;
State ex rel. Miller vs. Griffin, 46 Wash. 489.

So construed if they discriminate between two companies similarly situated in respect to a property tax, so that a property tax imposed under a general tax law is imposed upon the property of one and not upon the property of another, or, if such tax may be imposed at the *absolute discretion* of an official upon the property of one company and such official cannot impose it upon the property of the other company, the protection of the general law is denied by the special law, and the special law denies the protection which it provides for other property of the same kind and value similarly situated.

The time for filing the required report under both the railroad law and the telegraph law was the

same; the obligation to consider the report the same; the penalty for failure to file the report the same; protection against an assessment before the expiration of the time for filing the report is preserved to the telegraph company by fixing April 1st as the earliest date at which an assessment can be made, while such protection is by the Supreme Court of the state denied by construction to the street railroad company. Construing the two acts as one and accepting the construction given by the Supreme Court of the state to the railroad sections, we have in effect exactly the same rights given to each company by the same act, and then we have a section preserving the rights given to one and denying the same rights given to the other, without any possible reason therefor, and resulting in leaving it to the arbitrary discretion of the tax commissioner to impose or not to impose a tax for the year in the one case and absolutely denying the power to impose any such tax in the other if both properties be conveyed to a municipal corporation before the first day of April.

It might just as well be claimed that an act would be valid which should create a court, provide the same time for all to answer and then provide, without any reason therefor, that judgment

might be entered establishing a lien upon the property of some before the expiration of the time for answering, while as to others similarly situated no judgment could be entered.

That the discrimination against the property of street railroads was arbitrary because it constituted arbitrary selection, invidious treatment and not proper classification, is established by the decisions in the following cases:

Sioux City Bridge Company vs. Dakota County, 260 U. S. 441;

Raymond vs. Traction Company, 207 U. S. 20, 37;

Taylor vs. Louisville & Nashville Railroad Co., 88 Fed. 350, 364, 365;

Southern Railway Company vs. Greene, 216 U. S. 400, 417;

Gulf, Colorado & Santa Fe Railroad vs. Ellis, 165 U. S. 150, 165;

Pembina Mining Company vs. Pennsylvania, 125 U. S. 181, 188;

Yick Wo vs. Hopkins, 118 U. S. 356, 369;

Johnson vs. Wells Fargo Co., 239 U. S. 234, 237, 238, 242;

Reagan vs. Farmers Loan & Trust Co., 154 U. S. 362, 390;

Royster Guano Co. vs. Virginia, 253 U. S. 412, 415;

Detroit, Grand Haven & Milwaukee Railway vs. Fuller, 205 Fed. 86, 89;

McFarland vs. American Sugar Co., 241 U. S. 79, 85;

- Kansas City Southern Railway Co. vs. Road Improvement District*, 256 U. S. 658, 661;
County of San Mateo vs. Southern Pacific Railroad Co., 13 Fed. 722;
County of Santa Clara vs. Southern Pacific Railroad Co., 18 Fed. 385;
Kentucky Finance Corporation vs. Paramount Auto Exchange Corporation, Advance Opinions, U. S. Supreme Court (L. Ed.), July 2, 1923, pages 746, 747, 748;
Southern Railway Company vs. Watts, Advance Opinions (L. Ed.), February 1, 1923, page 199;
Spokane & Eastern Trust Company vs. Spokane County, 70 Wash. 48, 52;
State ex rel. Nettleton vs. Case, 39 Wash. 177, 181;
Samish Gun Club vs. Skagit County, 118 Wash. 580;
Ewert vs. Taylor, 38 So. Dak. 124, 160 N. W. 797;
State ex rel. Owen, Attorney General vs. Donald, 161 Wis. 188, 163 N. W. 238;
Board vs. Wilson, 15 Colo. 90;
Graham vs. Board, 31 Kansas 473.

VII.

THE GENTLEMEN'S AGREEMENT

At page 47 of their brief, defendants claim that there was a "gentlemen's agreement," which should

estop the plaintiffs from claiming that the tax in controversy is invalid and that the property conveyed by the company to the city was not the subject of taxation.

It is strange that the defendants should advance such a claim.

What was the alleged "gentlemen's agreement" and how was it kept?

It was not that real estate should be assessed as personal property in a lump assessment, but was an understanding that as the tax commissioner, pursuant to the statute, would assess the operating property as personality, power plants generating electricity used both for light and power, and transmission lines for light and power should be considered as operating property as a whole and not divided and apportioned partly to street railroad property and partly to lighting property. The operating light and power property not constituting a part of operating street railroad property was not under the jurisdiction of the commissioner. Electric power plants furnishing power to operate street railroads was under the jurisdiction of the commissioner, and so also were the transmission lines transmitting power from such power plants

to operate the street railroads. It was the *allocation* of the property which was the subject of the understanding, called by the tax commissioner and defendant's the "gentlemen's agreement," more properly called by us a "*modus vivendi*." The county assessor wished to "eliminate a large part of his work in carrying all these distinctions on the rolls. The tax agent for the traction company desired it for the same purpose, that it saved much work in his office, and we could see no objection to it except possibly an objection from a legal standpoint. Under what you might call a "gentlemen's agreement" between the two interested parties, we agreed that the assessment might be made in this manner and sanctioned it." (Testimony of Tax Commissioner) (R. 82).

The tax commissioner, on being examined by counsel for defendants, was asked:

"Q. Mr. Jackson, why did you list the operating property, both real and personal, of the street railway company in the City of Seattle for the tax of 1919, as *personal property*?"

"A. *I did it in pursuance to the provisions of the statute.*"

(Defendant's brief, page 16, R. 90.)

It is clear, therefore, that there is no foundation for the claim that there was any agreement as to

real and personal property being assessed as real estate in a lump assessment, but that the only understanding was that there should be no attempt to allocate a portion of the operating property to the nonoperating property and the remainder to the operating property. What did the tax commissioner in the year 1919 do before the report of the company was due? On March 15, 1919, instead of assessing all of the property of the company theretofore assessed by him in the manner and at the same date as in previous years, he singled out specific property in the City of Seattle because it was to be conveyed to the city, and placed a valuation on it of \$12,000,-000.00 as full value. He instructed the county assessor to assess "all property of the Puget Sound Traction, Light & Power Company *heretofore valued and assessed by this office*, with the exception of that property described in a certain inventory filed in the office of the city comptroller on the 30th day of December, 1919, and bearing comptroller's file number 72055." (R. 159).

The tax commissioner, therefore, not only did not act on any understanding in making the assessment, but he acted directly contrary to what he said was the understanding. He assessed only a

part of the property and did not attempt to assess all of the operating property of the company, but directed the local assessor to assess operating property previously assessed by the tax commissioner, not because such property *had become nonoperating property*, but because the company was about to convey to the city a certain portion of the operating property. He made the attempted assessment more than *sixty days* prior to the earliest date at which any similar property had ever been assessed in the State of Washington by the tax commissioner (R. 158, 159, 161).

McFarland vs. American Sugar Co., 241 U. S. 79, 85;

Detroit, Grand Haven & M. Ry. Co. vs. Fuller, 205 Fed. 86, 89.

VIII.

The method of administering the statute which the taxing officials adopted and enforced violated the Fourteenth Amendment to the Constitution of the United States and the decision of the Supreme Court of the state upheld that method contrary to the claim of the plaintiffs that it violated the Fourteenth Amendment.

The Supreme Court of the state, in its opinion, said (R. 176):

“Nor does the procedure or plan of administering the law that was adopted by the commissioner in making the assessment in this case, in any way

violate the Fourteenth Amendment to the Federal Constitution or any guaranty contained in the State Constitution. The procedure in *no way affected the substantial justice* of the tax itself, nor did it vitiate or in any manner affect the assessment."

The effect of classifying real estate owned in fee as personal property resulted in requiring the owner of such property, if he desired to pay the tax, to pay on the 15th day of March 100% of the tax instead of 97%. The classification of such real estate as personal property resulted in subjecting such property to a 100% rate when similar property was subjected to a 97% rate. The attempt to impress the property with a lien for taxes not levied until after the property had been conveyed to the city by making an assessment at a date when no such assessment ever had been attempted to be imposed upon any other property in the State of Washington of similar or dissimilar kind by the tax commissioner, and the singling out of the property of this one company from all other companies of the same kind in the State of Washington for such treatment, constitute, if any procedure could constitute, hostile and discriminatory taxation of a taxpayer and its property applied to no other similar company or property.

The language of this court in *Kansas City South-*

ern Railway Company vs. Road Improvement District No. 6, 256 U. S. 658, 661, is very applicable:

"Obviously, the railroad companies have not been treated like individual owners and we think the discrimination so palpable and arbitrary as to amount to a denial of the equal protection of the law * * *. Classification, of course, is permissible, but we can find no adequate reason for what has been attempted in the present case."

The language of the Supreme Court of the State of Washington in the case of *Spokane & Eastern Trust Company vs. Spokane County*, 70 Wash. 48, overruling the decision in *Ridpath vs. Spokane County*, 23 Wash. 436, cited and quoted from at page 39 of the brief of defendants, is very pertinent:

"Section 2, art. 7, of the constitution commands that

"The legislature shall provide by law a uniform and equal rate of assessment and taxation on all property in the state, according to its value in money, and shall prescribe such regulations by general law as shall secure a just valuation for taxation of all property, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property."

"As was said in *State ex rel. Wolfe vs. Parmenter*, 50 Wash. 164, 96 Pac. 1047, 19 L. R. A. (N. S.) 707: 'It is just as imperative that taxation shall be uniform and equal upon all property as it is

that all property shall be taxed.' There is neither uniformity nor equality where all kinds of property save one are, intentionally and in pursuance of a fixed and definite policy, assessed at less than forty per cent of its full and fair value, whilst that class of property is intentionally assessed at sixty per cent of such value. The facts pleaded do not show an erroneous valuation or a difference in judgment as to a correct measure of value, but rather an intentional and *arbitrary discrimination* against a particular class of property. Such an *arbitrary policy* is *vicious* in principle, *violative of the constitution*, and operates as a constructive fraud upon the rights of the property holder discriminated against" (52).

This case has been followed and approved by the Supreme Court of the State of Washington in—

Spokane & Inland Empire Railroad Co. vs. Spokane County, 82 Wash. 24, 29, 30;

Weyerhaeuser Timber Co. vs. Pierce County, 97 Wash. 534, 544;

East Aberdeen Land Co. vs. Grays Harbor Co., 102 Wash. 172, 177.

The case is in line with previous decisions of the Supreme Court of the state:

"*Uniformity is the highest and most important of all requirements applicable to taxation under our system.*"

Savage vs. Pierce County, 68 Wash. 623, 625;

State ex rel. Oregon Railroad & N. Co. vs. Claussen, 63 Wash. 535.

The same rule is announced by this court:

Sioux City Bridge Co. vs. Dakota County,
260 U. S. 441;

Taylor vs. Louisville & Nashville R. Co., 88
Fed. 350, 364, 365.

The statement in the opinion of the Supreme Court of the state in the case at bar, that "the procedure in no way affected the substantial justice of the tax itself, nor did it vitiate or in any manner affect the assessment," is a statement of fact not binding on this court in determining whether upon the undisputed facts the plaintiffs were deprived of rights *under the Federal constitution*. The determination of that question is one for this court.

Truax vs. Corrigan, 257 U. S. 312;

Ward vs. Love County, 253 U. S. 17, 22;

Union Pacific vs. Public Service Commission,
248 U. S. 67, 69;

Terre Haute etc. R. Co. vs. Indiana, 194 U.
S. 579, 589.

Merchants National Bank vs. Richmond, 256
U. S. 635, 638.

Carlson vs. Curtiss, 234 U. S. 103, 106.

IX.

There being no segregation in the assessment of real property from personal property, and the tax being in a lump sum upon a lump assessment, the

whole assessment is void if any nontaxable items were included in the assessment in such a manner as to be inextricably commingled with taxable items. Even if the assessment were valid when made, but the tax when levied was levied upon the value of real estate included in such assessment, when such real estate had ceased to be the subject of assessment, the whole tax was invalid. If an assessment is invalid which includes items not subject to such assessment and which cannot be separated from taxable items, then the inclusion in a tax, in a lump sum, of the value of nontaxable items, which value cannot be separated from the value of items which are taxable, renders the tax void.

“If the state board includes in its assessment any more of the railroad property than it is authorized to do, the assessment will be *pro tanto* illegal and void. If the unlawful part can be separated from that which is lawful, the former may be declared void and the latter may stand, but if the different parts, lawful and unlawful, are blended together in one indivisible assessment, it makes the entire assessment illegal. This is so well settled that it needs no citation of authorities, further than to refer to the opinion of this court in the former cases (118 U. S.). In the present assessments all parts of the property are blended together and are inseparable. If it be true, therefore, that property not authorized to be included in the assessments is

included therein, the assessments must be declared void."

California vs. Pacific Railroad Co., 127 U. S. 1, 29.

To the same effect are the following cases:

Northern Pacific Railroad Company vs. Garland, 5 Mont. 146;

County of San Mateo vs. Southern Pacific Railroad Company, 13 Fed. Rep. 722;

San Francisco & N. R. Co. vs. Dinwiddie, 13 Fed. Rep. 789;

County of Santa Clara vs. Southern Pacific Railroad Company, 18 Fed. Rep. 385;

Santa Clara County vs. Southern Pacific Railroad, 118 U. S. 394;

San Bernardino County vs. Southern Pacific Railroad Company, 118 U. S. 417.

The city is in privity with the company. It has private rights as distinguished from governmental rights only. On the 31st day of March, 1919, it acquired real and personal property. At that time none of such property was subject to assessment. Even if the property was then subject to assessment the real estate vested in the city prior to the levy of taxes upon real estate, and under the decision of the Supreme Court of the state in *State vs. Snohomish County*, 71 Wash. 320, such real estate was not subject to the levy of a tax in the

future. The city acquired the property in its private capacity as vendee of the company. As vendee of the company it has the right to the same protection of the Fourteenth Amendment that the company has. The distinction between public property of the city and private property of the city is clear. The Constitution of the state, however, in declaring that the property of a municipal corporation shall be exempt from taxation makes no distinction between public and private property. All municipal property is exempt.

It is respectfully submitted that the assessment and the taxes levied thereon were illegal; that the statute authorizing the assessment to be made in the manner in which it was made and the levying of a tax on such assessment is illegal; that the method of enforcing the statute was illegal and that such statute, the method of its enforcement and the decision of the Supreme Court of the state sustaining the statute and the method of its enforcement would, if permitted to stand, deprive the plaintiffs of their property without due process of law and did deny plaintiffs the equal protection of the law, all in violation of the Fourteenth Amendment to the Constitution of the United States, and for that

reason the decree of the Supreme Court of the state should be reversed.

Respectfully submitted,

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PUGET SOUND POWER & LIGHT COMPANY ET
AL. v. COUNTY OF KING ET AL.

ERROR TO THE SUPREME COURT OF THE STATE OF
WASHINGTON.

No. 138. Motion to dismiss or affirm submitted January 2, 1924.—
Decided February 18, 1924.

1. The time allowed, by the Act of September 6, 1916, for a writ of error from this Court to review a judgment of a state court, begins to run from entry of the formal judgment of record in the state court, and not from the previous filing of the court's opinion and decision. Procedure in the State of Washington considered. P. 23.
2. A party who did not raise a federal question in the state courts cannot come here by assigning error jointly with another party who raised it. P. 25.
3. The property of a street railway company, in view of its peculiar character, may be classified differently from property of commercial steam railways, for state taxation, without violating the Fourteenth Amendment. P. 26.
4. A law of Washington providing for taxation of all the operating property of street railways, as personalty, though consisting partly of real estate, and thereby depriving the owner of certain advantages as to time of payment, rate of interest and redemption allowed other owners of realty,—*held* not arbitrary. *Id.*
5. The Fourteenth Amendment does not impose on state taxation a requirement of equality so rigid that the legislature may not adjust its measures in view of the practical, as well as theoretical, incidence of taxation. P. 28.

117 Wash. 351, affirmed.

ERROR to a judgment of the Supreme Court of Washington which affirmed a judgment of a lower court dismissing the complaint of the Puget Sound Power & Light Company and the cross complaint filed by City of Seattle against its co-defendants, in a suit by the Power & Light Company to enjoin collection of taxes on its street railway property.

Mr. Howard A. Hanson and Mr. Malcolm Douglas, for defendants in error, in support of the motion to dismiss or affirm.

Mr. James B. Howe, Mr. Frederic D. McKenney, Mr. Thomas J. L. Kennedy, Mr. Walter B. Beals and Mr. Walter F. Meier, for plaintiffs in error, in opposition to the motion. Mr. Hugh A. Tait, Mr. Edgar L. Crider, Mr. Norwood W. Brockett and Mr. Edwin C. Ewing were also on the brief.

MR. CHIEF JUSTICE TAFT delivered the opinion of the Court.

The Puget Sound Power and Light Company owned a street railway, part of which was in Seattle. This part it sold to the City in 1919. In the contract of purchase it was agreed that if when the deed was delivered any lien should have attached to the property for the taxes of 1919, it should not constitute a breach of warranty, and the tax should be paid in amounts proportioned to the parts of the year during which the parties were respectively in possession. The deed was delivered March 31, 1919, and possession then taken. On March 15, 1919, an assessment had been made by the Tax Commissioner of the State on the operating property of the street railway, including that part then contracted to be sold to the city. The Power Company brought this suit in the Superior Court of King County, Washington, against the County and its taxing authorities, the State Tax Commissioner, and the City of Seattle to restrain the collection of taxes under the assessment as illegal. The Superior Court dismissed the complaint. Its action was affirmed by the Supreme Court of the State and this is a writ of error to that court. The case comes before us on a motion to dismiss or affirm.

The first ground for the motion is that the writ of error was not taken within the time allowed by law. By the

Act of September 6, 1916, c. 448, § 6, 39 Stat. 727, it is provided that no writ of error intended to bring any cause for review to this Court shall be allowed or entertained unless duly applied for within three months after entry of the judgment or decree complained of. The Washington Supreme Court sits in two departments and *en banc*. The Second Department filed its opinion October 15, 1921. The case was reargued before the court *en banc*, which in a *per curiam* opinion filed June 12, 1922, approved the decision of the Second Department and affirmed the judgment. On July 10th there was entered on the minutes of the court the following:

"Judgment.

"This cause having been heretofore submitted to the Court, upon the transcript of the record of the Superior Court of King County, . . . and the Court having fully considered the same, and being fully advised in the premises, it is now, on this 10th day of July, A. D. 1922, . . . considered, adjudged and decreed, that the judgment of the said Superior Court be, and the same is, hereby affirmed with costs."

The contention is that the *per curiam* opinion filed June 12th was under the constitution and laws of Washington the judgment from which the time for allowance of the writ of error from this Court began to run, and that the period thus expired on September 12, 1922, whereas the writ of error herein was not applied for until September 22nd. Under the law of Washington (§§ 10 and 11 of Remington's Compiled Statutes of Washington, 1922) a decision of a department of the Supreme Court does not become final until thirty days after it is filed, during which a petition for rehearing may be filed. If no rehearing is asked for, or no order entered for a hearing *en banc*, in the thirty days, the decision becomes final. If a hearing *en banc* is ordered and had, as here, the decision is

final when filed; but in all cases where the decision is final, there is a specific provision that a judgment shall issue thereon. It is apparent that however final the decision may be, it is not the judgment. It is said that the latter is a mere formal ministerial entry of a clerical character, whereas the real judgment is the final decision. Whatever the effect of the distinction in the procedure of the State, which counsel seek to make, we are in no doubt that that which the Washington statute calls the judgment is the judgment referred to in the Act of Congress of September 6, 1916, *supra*, fixing the time in which writs of error must be applied for and allowed. The motion to dismiss the writ granted the Power Company must be denied.

A separate motion to dismiss is directed against the City of Seattle which appears as a plaintiff in error with the Street Railway Company. It was made a defendant in the Superior Court by the Company. It filed an answer supporting the averments of the complaint and a cross complaint against its codefendants, asking the same relief as that asked in the complaint. It took a separate appeal to the Supreme Court of the State. No evidence appears in the record that it raised an objection based on the Fourteenth Amendment to the Federal Constitution or any other federal question in the Superior Court or Supreme Court. It is too late for the City to raise it in the assignment of errors in this Court, even though it joins in the assignment with the Street Railway Company which did raise such an objection in all the courts. *Sully v. American National Bank*, 178 U. S. 289, 297. It is difficult to see how, under *Trenton v. New Jersey*, 262 U. S. 182, and like cases, the City could have been heard as against the State to complain of state taxes on the ground that they violated the Fourteenth Amendment; but it is not necessary to decide this. The motion to dismiss the writ of the City must be granted for the reason first stated.

We come now to the motion to affirm the judgment against the Power Company. By objections seasonably taken before both state courts and in the assignment of errors, the Power Company questioned the validity of the Act of February 21, 1911, of the Legislature of Washington (Laws of Washington, 1911, p. 62) amending an Act of the same body of March 6, 1907 (§12, c. 78, Session Laws of 1907), under which the taxes complained of were assessed. Before 1911, the laws of Washington provided for a separate assessment of the real estate and of the personalty of a street railway. By the act of that year this was changed and it was provided "that all of the operating property of street railroads shall be assessed and taxed as personal property." The effect of this act, so far as the real estate of the street railway used in its operation was concerned, was, first, to fix the day of payment of the taxes as on March 15th in each year, in accord with the law as to taxes on personalty, instead of May 31st, the day fixed for the payment of real estate taxes, with an option in the real estate taxpayer to postpone payment of one-half of his tax until November 30th; second, to impose 15 per centum as interest after delinquency, instead of 12 per centum interest as on real estate tax delinquency; and, third, to authorize a sale of the property taxed on ten days' notice after delinquency, without any right of redemption, while the sale of real estate for delinquency is longer delayed and a period of redemption is reserved.

It is insisted that to make these differences between the taxation of real estate of a street railway and that of other railroads, other corporations and individuals, is to deny owners of street railway property equal protection of the laws.

The Act of 1911 treated the operating street railway property as a business unit, as a machine consisting of cars, tracks, street easements, wires, power houses and

all the parts of one system. More than half of this total is probably personalty. Much of the realty is mere easements in the streets. The assets of a street railway differ widely from those of the steam commercial railways that own the land upon which their tracks are laid, that have most extensive terminals and whose business is of a radically different character. A separate treatment of these two classes of railroads for taxation has been sustained by this Court because of these manifest differences. *Savannah, etc., Ry. Co. v. Savannah*, 198 U. S. 392. *Metropolitan Street Ry. Co. v. Board of Tax Commissioners*, 199 U. S. 1. A street railway is *sui generis*. It is not necessarily to be regarded as real estate. Its value is made of uncertain factors. When its franchise to do business expires, its easement in the streets usually terminates, and its rails become but scrap steel. We do not think, considering the very wide discretion a legislature has in such a case, that it was arbitrary to tax the whole street railway unit as personalty. That such a change in this case entailed no real hardship or arbitrary discrimination is shown by the fact that before the new method of treating street railway property was enforced, the tax agent of the street railway company for several years requested that realty and personalty be taxed *in solido*.

We are considering this case only from the standpoint of the Fourteenth Amendment to the Federal Constitution. The objections based on the state constitution of Washington have been settled adversely and conclusively for us by the decision herein of the State Supreme Court. Counsel cite us cases which have little relation to the federal question before us. *Johnson v. Wells Fargo & Co.*, 239 U. S. 234; *Ewert v. Taylor*, 38 S. D. 124; *State ex rel. Owen v. Donald*, 161 Wisc. 188, and like cases involved the application of somewhat stringent provisions of state constitutions as to equality of taxation on

all kinds of property which left but little room for classification. Such restrictions have much embarrassed state legislatures because actual equality of taxation is unattainable. The theoretical operation of a tax is often very different from its practical incidence, due to the weakness of human nature and anxiety to escape tax burdens. This justifies the legislature, where the Constitution does not forbid, in adopting variant provisions as to the rate, the assessment and the collection for different kinds of property. The reports of this Court are full of cases which demonstrate that the Fourteenth Amendment was not intended, and is not to be construed, as having any such object as these stiff and unyielding requirements of equality in state constitutions. No better statement of the unvarying attitude of this Court on this subject can be found than in the often quoted language of Mr. Justice Bradley, in speaking for the Court in *Bell's Gap R. R. Co. v. Pennsylvania*, 134 U. S. 232, 237:

"The provision in the Fourteenth Amendment, that no State shall deny to any person within its jurisdiction the equal protection of the laws, was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, such as churches, libraries and the property of charitable institutions. It may impose different specific taxes upon different trades and professions, and may vary the rates of excise upon various products; it may tax real estate and personal property in a different manner; it may tax visible property only, and not tax securities for payment of money; it may allow deductions for indebtedness, or not allow them. All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the State legislature, or of the people of the State in framing their Constitution. But clear and hostile discriminations

against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition. It would, however, be impracticable and unwise to attempt to lay down any general rule or definition on the subject, that would include all cases. They must be decided as they arise. We think that we are safe in saying, that the Fourteenth Amendment was not intended to compel the State to adopt an iron rule of equal taxation."

Clearly there is nothing of an unusual character in the method adopted in this case for the assessment and collection of taxes upon street railways. The general practice of providing special methods of estimating the burden of taxation which this peculiar kind of property should bear is well known and proves that it justifies a separate classification.

The judgment of the Supreme Court of Washington is

Affirmed.
